

Public briefing session on
FOREIGN OWNERSHIP, CONTROL AND DOMINATION

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Distinguished Commissioners, it is an honor to appear before you today to discuss the topic of Foreign Ownership, Control and Domination. Thank you for giving me the opportunity to discuss this very important topic and share with you how the Defense Security Service mitigates national security risks posed by foreign investment. With the increasingly global nature of our defense supply chains, the discussion of how to identify and mitigate foreign ownership, control or influence — FOCI — has never been more important. As Dr. Hamre already mentioned, in the Department of Defense we use the term FOCI as opposed to FOCD.

For background and context, the Defense Security Service — DSS — oversees the National Industrial Security Program, or NISP, on behalf of the Department of Defense and 27 other Executive branch agencies. By Executive Order, the Secretary of Defense is the Executive Agent for the Federal Government to execute the NISP, and DSS administers the program on behalf of the Secretary of Defense. There are currently over 10,000 companies with facility clearances that work on classified contracts for DoD and those other Agencies. A facility clearance is essentially a license to do national security work for the U.S. Government. DSS oversees the security posture of those companies. When we receive a request to clear a company to perform on a classified contract, we weigh the importance of the product or service that the company will provide to our national security infrastructure, against the potential risk or threat the company's access to classified information and systems could pose. We are committed to this mission, and we have put robust measures in place that will identify and mitigate the FOCI prior to any facility clearance being granted.

Today I would like to give you an idea of how robust these procedures are, and how DSS has changed these processes over time in response to the increasingly global nature of our security environment. I would offer these thoughts to you for your consideration as you too consider how the Commission can continue to improve America's nuclear energy program in this environment.

So, how does DSS go about measuring the level of FOCI at companies? How do we evaluate the risk that FOCI poses? And how can FOCI be mitigated so our nation can be confident that these companies considered to be under some form of FOCI can continue to work on classified contracts for the benefit of our collective national security?

The National Industrial Security Program was established by Executive Order 12829. The baseline standards of how the NISP should be implemented by contractors are outlined in the NISP Operating Manual — the NISPOM. According to the NISPOM, a U.S. company determined to be under FOCI is not eligible for a facility clearance until security measures are put in place to negate or mitigate this FOCI. There are seven (7) specific FOCI factors and one (1) general factor that are to be considered “in the aggregate” prior to making a FOCI determination, or establishing a mitigation strategy for that company.

Before I further discuss these factors, I would like to reiterate the phrase “in the aggregate.” As Dr. Hamre mentioned, we live in a world that increasingly consists of global supply chains, and we need to think in more sophisticated ways on how to determine what constitutes genuine risk. It is my assessment that, if we take an absolute approach to any one FOCI factor, we risk shutting out the potential for valuable contributions some companies can make to our national defense by mandating FOCI mitigation procedures that are unnecessary, or that the company may not be able to uphold.

The FOCI factors are all related to the company, the foreign interest and the government of the foreign interest, and they are: (1) the record of enforcement and/or engagement in unauthorized technology transfer; (2) the type and sensitivity of the information that will be accessed; (3) the source, nature and extent of the FOCI; (4) the record of compliance with pertinent U.S. laws, regulations, and contracts; (5) the nature of any relevant bilateral and multilateral security and information exchange agreements the U.S. may have with the foreign interest; (6) ownership in whole or in part by a foreign government; and (7) the record of economic and government espionage against U.S. interests. The one general factor I mentioned consists of any other information that would indicate or demonstrate a capability on the part of foreign interests to control or influence the operations or management of the business organization concerned. Again, I will emphasize that we evaluate all of these factors in the aggregate.

While these factors are fairly straightforward to understand, I would like to highlight the “economic and government espionage” factor. Our Agency has extensive knowledge pertaining to how foreign countries target our technologies. In fact, every year we publish a document titled “*Targeting U.S. Technologies: A Trend Analysis of Reporting from Defense Industry in the U.S.*” This document is based on reports of suspicious contacts provided to DSS by cleared companies. Consequently, between this information and our access to other relevant information, DSS is uniquely qualified to evaluate the record of economic and government espionage against U.S. targets, and we use this expertise when considering FOCI factors in the aggregate.

So, while the NISPOM provides us with these FOCI factors to consider, how does DSS make the determination on which companies should be considered to be under FOCI? The answer to this question adjusts with the changing global security environment. Several years ago we recognized the need for additional due diligence when evaluating FOCI in a changing security environment. We created organizational structures and analytical process dedicated to manage this risk. Our processes are supported by robust data sources and comprehensive research to track certain aspects of the FOCI factors mentioned earlier. In fact, we take the identification and evaluation of FOCI so seriously, that no company, whether FOCI is obvious or not, will receive a facility clearance until we have fully reviewed all documentation provided by the company and have conducted validating research. Currently, this equates to approximately 1300 FOCI assessments each year. Right now there are approximately 160 companies in the NISP that are considered to have significant foreign ownership, or are foreign

controlled, to an extent that a mitigation plan is in place. This is defined as having at least 5% ownership with Board Representation, or where the foreign interest has sufficient rights to control the Board.

Commissioners, today, DoD and DSS currently have five types of standard mitigation agreements that we consider when establishing a FOCI mitigation plan. These range from a very basic Board Resolution to address minimal FOCI, to the option of having the company emplace a Voting Trust. In a Voting Trust, the company actually transfers legal title of the company to cleared U.S. Trustees. The emplacement of the mitigation agreement is handled by our FOCI staff. Once a company goes under FOCI mitigation, DSS maintains a continuous oversight and monitoring process of the company. This monitoring and oversight process ensures that the mitigation strategy is being properly implemented, and that any changes to the FOCI at the company are identified.

When I provided you with the number of 160 FOCI mitigation agreements, I mentioned these were companies under foreign ownership or control, and I intentionally omitted the word “Influence,” or what you refer to as “Dominance.” While ownership and control can be ascertained through corporate documents, the concept of Influence — or Dominance in your case — is something that, I would argue, is more difficult to define. How do we make determinations pertaining to influence if they are based on potential actions? For example, can we say a company should go under some FOCI mitigation because we know they have extensive ties to an entity that targets the technology that the company is working on for the U.S. government? The answer is yes. On behalf of the DoD and the 27 other Federal Agencies, DSS is charged with ensuring measures are put in place to manage that risk. While we do not put the same measures in place for those companies under significant foreign ownership or control, we do however mandate additional security measures for companies that we believe may have the potential for being unduly influenced by foreign entities.

To conclude, like Dr. Hamre, I too believe foreign involvement AND foreign investment are essential to the success of America’s national defense. This is why we continue to develop processes that allow companies in the National Industrial Security Program to have confidence that FOCI companies can securely work in areas that benefit our national security. And as you weigh your options for allowing foreign companies to assist you with strengthening America’s nuclear capability, we would be happy to share our procedures with the Commission as you evaluate FOCD.

Thank you for inviting me to appear before you today and I hope it has been helpful. It has been my pleasure and we look forward to supporting your efforts.