GLOBAL MERGERS & NATIONAL SECURITY.

By Stuart S. Malawer

I. INTRODUCTION.

The world of global mergers today is like a Virginia steeplechase, frantic and exciting, with a field of powerful participants. The competitors are hyperactive; adrenalin is at fever pitch, leaving spectators anxious and amazed. But in an instant a horse may stumble, and if so, it will almost certainly face a horrible end.

Global mergers today are in a turbo-charged environment, where global activity is at an historical high. Corporations are feverishly looking for deals worldwide. But in the post-mortems of all tragedies, one can usually spot early warning signs, almost always overlooked until it is too late. Were there unforeseen obstacles? Were the participants new and inexperienced? Did they understand the rules? Did the experienced ones react irrationally?

The world of global mergers today is the equivalent of extreme sports-boxing. Since 9/11 the field has become more dangerous. New, inexperienced players have entered the world of cross-border acquisitions and mergers, yet each brings its own agenda. Now the home countries of the experienced firms and others are beginning to change the rules – thus creating new challenges for all.

The intent of this article is to explain the new world of global mergers and cross-border transactions since 9/11 to better perceive the dimensions and contours of the new global realities. Newer developments include takeovers emanating from developing countries, greater concern for national security, rise of resource nationalism and growth of economic protectionism. The article explores recent data and deals to provide a context for a discussion of the new role firms from developing and transitioning economies are assuming. It focuses on the critical forces of this era – an era of heightened national security and global insecurity. Particular emphasis is placed on the United States and legislative debate over tightening restrictions of foreign investment and global mergers impacting U.S. firms. The

article concludes by addressing the broader international political context and policy challenges confronting the United States.

In particular, this overview concludes with observations about this unsettling environment and the policy challenges confronting the United States. It suggests that U.S. and global policies are necessary to avoid disastrous consequences, ones potentially leading to unnecessary restrictions on foreign investment or worse, a world characterized by global protectionism that would stymie economic growth and political development worldwide.

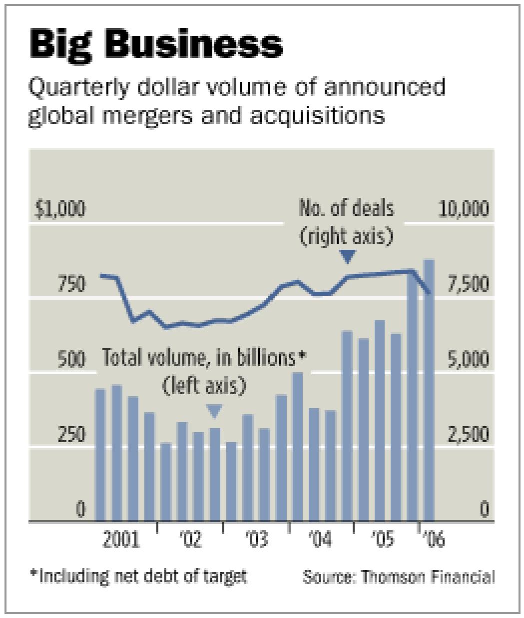
II. GLOBAL LANDSCAPE – Investment Data & Recent Deals.

International transactions are at the heart of economic globalization,[1] and foreign direct investment is a critical aspect of these transactions. Cross-border acquisitions and global mergers are at their core, and it is those transnational corporate undertakings that have raised national security anxieties worldwide.[2] Resource nationalism and renewed reaction to globalization further stir global anxieties. Combine these concerns with the growing number of global takeovers by private and state-owned firms from China, Russia and India and a dramatically new and unsettling global landscape becomes evident.[3]

This latest global environment has evolved in the post- 9/11 world, in part from reactions to the threat of global terrorism, but also in large measure from the relentless march of economic change in developing and transitional economies. This change has been accentuated by high energy and commodity prices and an international economy awash in private capital, as well as corporate and government surpluses.

Global Data.

The merger boom of the late 1990s is back.[4] Worldwide deals reached a total volume of $2.8 trillion in 2005, up from $1.9 trillion in 2004.[5] In the first quarter of 2006 $857 billion in global mergers and acquisitions were announced, the highest level since 2001.[6]

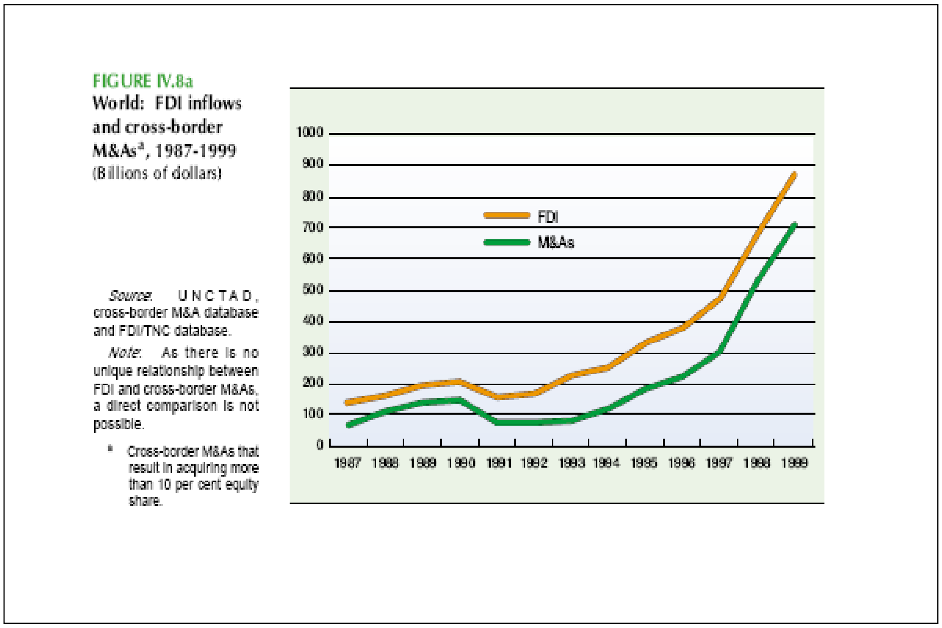


WALL STREET JOURNAL (April 4, 2006).

The year 2006 is poised to set new records.[7] As of May 2006 global mergers and acquisitions topped $1.3 trillion, a 40% increase over the same period the prior year. The announced U.S. merger activity for the current year as of May 2006, was $476 billion, marking the highest since 2001.[8]

The recently released annual study on foreign direct investment by the United Nations Conference on Trade and Development (UNCTAD) determined that global foreign direct investment (FDI) inflows rose by 29% to $916 billion in 2005, compared to a 27% increase in 2004.[9] "As in the late 1990s, that growth was spurred by cross-border mergers and acquisitions," the study concluded.[10] It further concluded that the value and number of mergers and acquisitions in 2005 were comparable to the averages in 1999-2001.[11] Interestingly, the study noted that many parts of the world undertook intense discussions on economic protectionism.[12] While noting the importance of newer investment from developing and transitioning economies and from private equity funds, it did not discuss the issue of national security.[13] It ominously concluded that "the number of changes (to a host country's regulatory environment) making a host country less welcoming to FDI was the highest ever recorded by UNCTAD."

This current pattern of FDI growth and importance of global mergers is similar to the go-go years of the late 1990's. An earlier study by UNCTAD, in 2000, determined that global mergers amounted to $710 billion as part of the total worldwide foreign direct investment of $880 billion in the 1990s.[14]



WORLD INVESTMENT REPORT 2000 (UNCTAD).

The study further concluded that 80% of foreign direct investment into the United States during the late 1990s resulted from cross-border mergers and acquisitions.[15] According to the U.S. Bureau of Economic Analysis, foreign direct investment into the United States last year reached its highest level since 2001.[16]

In sum, recent data highlights that the global merger boom is roaring back. Such mergers are the major source of FDI into the United States, and despite the war on terrorism, foreign direct investment into the United States and its accompanying cross-border mergers and acquisitions of U.S. firms are at their highest levels since 9/11.[17]

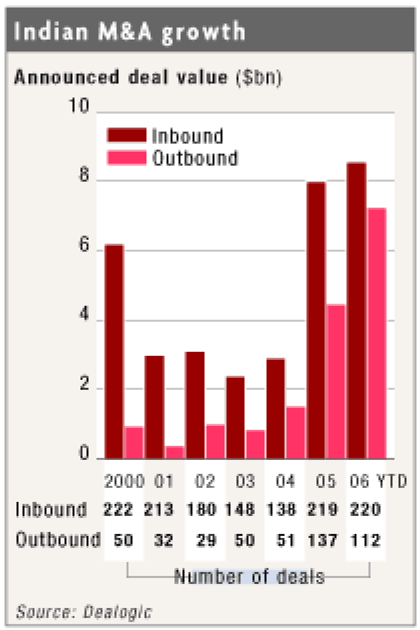
Global Deals.

American anxiety over global mergers and their implications for national security reached record heights with the aborted management takeover of several U.S. port facilities by the UAE-based Dubai Ports World in early 2006. This political fiasco for the Bush administration came a few short months after the China-based CNOOC dropped its bid for U.S.-based Unocal and its global oil reserves. Likewise, this fiasco occurred shortly after the takeover of IBM's PC business by China-based Lenovo. The recent transatlantic purchase of Lucent Technologies by France's Alcatel raised concerns of national security regarding sensitive telecommunication's research.

But the issue of national security concerns is not limited only to the United States government. China Mobile Communication's Corp, the world's largest wireless operator, based on subscribers and market capitalization, was forced to drop its

$5.3 billion bid for European-based Millicom International Cellular.[18] This decision came in the midst of mounting concern in Europe of Chinese ownership in the telecom sector. Only after a severely bruising battle did India-based Mittal take over European-based Arcelor to form one of the largest steel companies in the world – and only after the Russian firm Severstaal was dropped, perhaps for being viewed as more of a national security risk.[19] The recent announcement that Tata Steel will buy British steelmaker Gorus Group will make it the biggest foreign acquisition by an Indian company yet.[20]

India's outbound merger and acquisition growth is greater than ever.[21] Its outbound investment is almost as great as its inbound deal value.[22]



FINANCIAL TIMES (October 4, 2006).

However, India is also concerned about national security, particularly, foreign investment into its infrastructure.[23] India is considering new legislation similar to the legal regimes in the European Union and the United States that review foreign investment in context of security concerns. Not to be left out, China is also raising fears that it too will restrict foreign takeovers of state-owned companies.

Russia-based Gazprom's proposed takeover of Centrica in the United Kingdom and its interest in investing in European pipelines has raised concerns in the United Kingdom and in Europe, primarily relating to the aggressiveness of Russian firms in the global energy sector.[24] This aggressiveness has particularly aggravated the situation in France[25] and Germany.[26] Russia's cut-off of natural gas supplies to the Ukraine earlier this year and its interest in increasing its stake in EADS, the aerospace group, has only further inflamed political sentiment.[27]

The Russian Federation's most recent threat to curb foreign investment into the massive Sahalin-2 project and the massive Shtokman natural gas field,[28] along with its growing restrictions on investment in the energy sector generally, highlight a new dimension of global mergers and national security – one of "resource nationalism," where the protection of natural resources, principally oil and energy reserves, are viewed as a matter of national security. This trend is also visible in Bolivia's recent restrictions on foreign firms participating in its oil industry[29] and the attempt by Ecuador to terminate its long-term production agreement.[30] These actions by Bolivia and Ecuador further extends resource nationalism in Latin America that is evidenced by Venezuela's long-standing restrictions on its oil industry, which are clearly directed against the United States.

The intriguing aspect of these new global realities is that many of the global mergers are now emanating from companies in the Middle East, China, India and Russia. For example, the recent merger of two Russian firms (Rusal and Sual) and a Swiss firm (Glendore) created the world's largest aluminum company, overtaking Alcoa of the United States.[31] Many of the transactions are energy and commodities related. But now some of these countries themselves are concerned about growing foreign investment into its strategic industries. They are beginning to restrict foreign takeovers based on their own national security calculations, in many ways mirroring those made in the United States and Europe.

This increasing concern for national security in economic and business transactions is new to today's global economy. The recent 2006 report of the Organization for Economic Co-operation and Development (OECD) on foreign direct investment states, "Issues of security and other strategic concerns have moved to the forefront of domestic and international investment policy making."[32] The Secretary-General of the OECD noted it recently. He says,"The global economy is also facing a resurging risk of international investment protectionism. Foreign corporate takeovers have been made subject to tighter political scrutiny in major countries, both members and non-members of the OECD."[33] Indeed, the OECD considers recent action restricting takeovers to be going "beyond just national defense to include energy security."[34] It notes that "concerns about security and other essential national interests are on the rise" and can be seen in Europe, the United States, China and India.[35]

<u>Major Developments</u>.

Four newer realities in global trade in the post-9/11 world are clearly discernible.

- **Takeovers and foreign investment are emanating from firms based in developing countries such as India and the United Arab Emirates as well as from countries transitioning from central-planning such as China and Russia.**

- **National security fears are arising among many governments, not only those in the United States and Europe, but also in such countries as Russia, India and China.**
- **More resource nationalism is evident in countries with significant oil and gas reserves and production facilities.**
- **This rise occurs in tandem with both latent protectionism in many countries and with an increasing reaction against global integration now referred to by some as "economic patriotism."**

Most important is understanding why takeovers and foreign investment are emanating more today from developing countries and those transitioning from central planning to free markets. There are five major reasons and five supporting causes.

The five major reasons are the following:

- **The World Trade Organization (WTO) has spurred the growth of world trade and investment over the last ten years. India and China have greatly benefited from membership in the WTO and the Gulf states have prospered from both trade liberalization and higher oil prices.**
- **Foreign companies that have foreign government equity are in a strong position to mount foreign takeovers. They do not have to worry about the reaction of public markets. This is true of firms in many countries including China and Russia.**
- **Growth in foreign corporate profits and surpluses (retained earnings) provide a ready war chest to be utilized by foreign corporations in their cross-border takeovers.[36]**
- **As a corollary to this reality, one must recognize that foreign countries have amassed huge surpluses that can help finance private takeovers and investments.**
- **The increase in oil revenues and those due to higher commodity prices have allowed foreign governments to finance overseas activities. Russia and the UAE are prime examples of this development.[37]**

Several supporting reasons explain this trend. First, because abundant liquidity exists throughout the world, it is easy to convert corporate reserves into corporate bids. Second, historically low interest rates for corporate borrowers facilitate ever more cross-border transactions. Third, explosion in foreign capital markets of initial public offerings (IPO's) allow for even greater financing.[38] Fourth, growth in private equity introduces a new and potentially significant and worrisome player into global mergers. And finally, strong economic growth in a range of countries provides firms a strong basis for global undertakings.

In sum, there are new major players in global trade that have so much capital available and growing market prowess that they are able to more strenuously compete for global mergers – which they have done with increasing success.

III. U.S. RESPONSE TO THE NEW LANDSCAPE.

The U.S. response to this new landscape has been to bog itself down with a debate over foreign investment focused on revamping the Exon-Florio legislation and the related congressional review process. Public demand for increased congressional oversight of foreign takeovers persists, but to a weakened degree. "A key issue for Congress is whether and in what way it should respond to essentially private economic investment activities and how to assess the impact of such investments on the Nation's security."[39] After a year of consideration, Congress has not enacted any changes. A review of the existing legislative system and contending bills is instructive.

The principal legislative and regulatory process to review foreign takeovers of U.S. firms is the Committee for Investment in the United States (CFIUS) as empowered by the Exon-Florio amendment. This review process gives the President significant powers to block particular types of foreign investment.

In 1975 an executive order established CFIUS , as an interagency panel, primarily to monitor foreign direct investment into the United States.[40] In 1988 the Exon-Florio amendment strengthened and better focused the review of acquisitions and mergers.[41] This amendment was enacted amid congressional concerns over foreign acquisitions of U.S. firms, particularly by firms from Japan. This change was included as a provision of the Defense Production Act. The new legislation authorized the President to investigate the impact of foreign acquisitions of U.S. companies on national security. It authorized the President to suspend or prohibit acquisitions that might threaten national security. CFIUS was delegated responsibility for investigating foreign acquisitions, when necessary.

The legislation established a 90-day review process involving a voluntary submission by the acquiring party, an initial review period of thirty days to determine whether the acquisition could pose a threat to national security, and an additional 45- day investigation that results in a report to the President. The President then has 15 days to allow, suspend or prohibit the transaction. It is important to note that national security is not defined; only factors to consider are enumerated. Withdrawing and refining notices restart the review clock.

In 1992 various amendments were adopted requiring greater reporting to Congress. A report to Congress was required if the President made any decision. An investigation was required if the acquiring company is controlled or acting on behalf of a foreign government. (Byrd Amendment) When credible evidence was found, a report was also required every four years

The current regulatory process is minimally transparent and not discretionary. The committee's mandate is not well defined; there is no definition of national security to provide guidance to the committee or parties to a transaction. The

statute provides for factors to be considered in determining a threat to national security. They include its impact on domestic production for national defense; effect on the capacity of industries to meet defense requirements and the foreign control of commercial activity; its implications for national security, the military, technology transfer as to terrorism, as well as the potential effects on U.S. technological leadership.

In a seminal study last year, the GAO empirically examined the cases considered by CFIUS between 1997 and 2004. CFIUS had 470 notifications[42] and only 45 investigations, resulting in just two presidential determinations, both concerning telecommunications.

CFIUS 1997 - 2004 Data.					
	Notifications	Acquisitions	Investigations	Notices w/d	Pres. Determinations
1997	62	60	0	0	0
1998	65	62	2	2	0
1999	79	76	0	0	0
2000	72	71	1	0	1
2001	55	51	1	1	0
2002	43	42	0	0	0
2003	41	39	2	1	1
2004	53	50	2	2	0
Total	470	451	8	6	2

GAO Testimony, "Implementation of Exon-Florio." p. 13 (GAO-06-135T -- October 6, 2006).

Clearly, this process has not resulted in many or even significant decisions blocking foreign takeovers for national security reasons. It seems that the CFIUS process draws more heat than the outcome would otherwise suggest.

The legislative proposals during the 2006 congressional session have generally required greater congressional notification and greater review by CFIUS. The Senate and House have considered two different set of proposals. Currently, they are at a standoff. Strangely, the House's deliberations are more balanced and less restrictive, contrary to its normal position in trade matters when compared to the Senate.

In the Senate the Shelby-Sarbanes Bill required congressional notification when a review is initiated. It mandated a 45-day investigation when a foreign government-controlled entity is involved. It also required a ranking of countries based on compliance with weapons-control deals. In the House the Blount Bill was less stringent than the Senate deliberations would have required. The House appears to have recognized to a greater extent that economic security entails

encouraging foreign investment. Congressional notification would be required only upon the completion of a review. Other items also considered were the tracking of mitigation agreements, protecting critical infrastructure and providing for new roles for the Department of Homeland Security and the Director of National Intelligence.[43]

As of the midterm elections this year, the Congress has not enacted any changes to the CFIUS regime. Virginia Senator John Warner, a Republican, has been "a voice of reason,[44] who blocked an attempt to push through the Senate a proposal that would have toughen national security reviews of foreign takeovers of U.S. assets.[45]

IV. CONCLUSIONS.

The policy challenge to the United States is to continue promoting the economic benefits of global trade and mergers within this new global dynamic. The unanswered question is whether in the coming years new national security goals will outweigh other goals that promote economic development and political development. The future of the trading system depends on the answer that the United States and others provide.

We have had a change in the political dynamics within the United States and within other countries. The role of national security and reaction against globalization are growing pieces of this new post-9/11 era. In global trade relations today, the world is more multipolar, as evidenced by the rise of Brazil, the ascendance of the Russian Federation, the rapid growth of India and China (BRICs), the reemergence of Japan and the dynamic growth of Korea. New sources of wealth from global trade and petrodollars are fueling and super-charging global mergers. New players are emerging with new interests.

Warning signs show that the global trading system could suffer a disaster. Russia is reimposing controls on foreign investors in strategic industries. India is considering controls on Chinese investment into its infrastructure and energy sectors. China is wary of foreign takeovers of its state-controlled industries. Korea is worried about foreign private equity in its industry reorganization.[46] The Ukraine is considering restricting foreign participation in the development of its Black Sea oil and gas reserves.[47]

The current slowdown in the U. S. economy and continuous growth overseas will only enhance the activities of foreign firms and create even more fertile ground for global mergers.[48] This year's record U.S. investment abroad in foreign capital markets only adds greater fuel to cross-border takeovers to be undertaken by a range of foreign firms.[49]

The promotion of global mergers promotes global trade which holds the promise of aiding in transforming inefficient markets and undemocratic societies. However,

a concern for national security is increasingly posing a challenge to the growth and promise of trade in the post-9/11 era. The reemergence of latent protectionism fueled by growing reaction to global integration only adds to this situation. But if the warning signs are heeded, the global system may yet avoid a catastrophe. While investment controls are being considered worldwide, few have been adopted. For example, the United States is continuing to negotiate with Russia and is optimistic about reaching an agreement concerning Russia's accession to the World Trade Organization.[50] The proposals to change U.S. legislation regulating foreign direct investment have stalled. U.S. policy remains anchored in the belief that global business transactions, global mergers, trade and investment are beneficial to bringing needed political and cultural change worldwide.

At this point, the global economy seems strong; all of its horses are running. But warning signs are present. Almost a century ago an earlier era of globalization was ended by a single shot. Overreaction today could have the same result.

…………………………………………….

[Update November 24, 2010]

By Stuart S. Malawer – From PowerPoint Presentation

Global Mergers & National Security.
-- *Global Mergers & New Realities* --

New Reality – New Landscape Post 9/11 & Post 2008.

U.S. Law & the Legislative Scene (2006-2010) – *CFIUS / FINSA*.

- ❑ While various pieces of legislation restrict foreign ownership in U.S. industries (aviation, defense, shipping, communications) the recent political debate has been over CFIUS and Exon-Florio Amendment.
  - Other regulatory approvals for mergers are required (DOJ, FTC).
- ❑ CFIUS established in 1975 by Executive Order to monitor FDI into the U.S.
- ❑ Was amended by Exon-Florio in 1988. Required review of foreign takeovers on national security grounds. And revised again in 2007 (FINSA).
  - President could prohibit <u>takeovers</u> if credible evidence of a threat to national security. ("Covered Transactions")
- ❑ Procedure (90-Day Process):
  - Submission is voluntary.
  - 30-day initial review.
  - If could have credible evidence then 45-day investigation.
  - President has 15 days to allow, suspend or prohibit..

    ……………………….
  - National Security not defined, *factors* to consider.
  - Withdrawing and refiling notices restart the clock.

--- Four Developments ---

- ❑ What is the new landscape for <u>global merger</u> in the post-9/11 world & post-2008?
  - ❑ This is part of <u>the larger global investment field</u> – other forms of FDI and portfolio investment.
- ❑ How is *post-9/11* & *post – 2008* different from the *"post-Cold-War era" (1990s)*?
- ❑ The new contours of the post-9/11world – *national security aspects* – are critical to assessing global mergers & investment today.
- ❑ Understanding the implication of the *global financial crisis* is a newer dimension, since 2008 – especially as to natural resources (including food security).

Four Developments in Global Trade Impacting Global Mergers:

- **Takeovers & foreign investment are coming from *developing countries* (private firms, state-owned firms & governments, Sovereign Wealth Funds.**
- **Rise of *national security* concerns.**
- **Increasing *reaction against global integration* (economic protectionism / economic patriotism) & global financial discord.**
- **Growing *resource nationalism* in oil & gas sectors.**

-- Summary – Newer Global Landscape --

Domestic Political Change & Global Mergers

- **Since 9/11 the *political aspects of global trade* have changed. (Heightened by 2008 financial crisis.)**
- **The *issue of global mergers* needs to be understood in this newer landscape.**
- **Specifically, we've had a change in the political dynamics within the U.S. <u>and</u> within other countries.**
- **The role of <u>national security</u> and <u>reaction against globalization</u> are growing pieces of this new "post-9/11 era." These trends have been accelerated and broadened by the 2008 global financial crisis and recession.**

-- Global Trade & Global Mergers Post-9/11& Post-2008 ---

- Greater *protectionism* and concern for *national security* in the U.S. & EU are having a significant impact on trade relations & review of global mergers.
  - Russia is considering imposing controls on foreign investors in "strategic industries."
  - South Korea is reassessing its treatment of foreign private equity in industry reorganizations.
  - India concerned about Chinese investment & national security.
- Greater role of foreign corporations with *government ownership* is of growing concern in assessing global mergers.
- "*Resource nationalism*" in Latin America (Venezuela, Bolivia, Ecuador and Canada) and elsewhere has an unclear impact on global mergers. "*Food Security*" has recently added to this issue.
- The greater global rivalry for oil and energy among numerous countries is having a growing impact on global mergers.

-- Final Thoughts --

- The *transformational power of trade* in post-9/11 (including promoting global mergers) to bring political and cultural change is increasingly challenged by growing concern for national security.
- The *2008 global financial crisis & recession* have added elements of protectionist concerns.
- Our *policy challenge* is to continue promoting the political and economic benefits of global trade and mergers within this new dynamic.
- *Final Question* -- In the coming years will the newer national security goals of the United States and other countries outweigh other national goals that promote economic development and democracy worldwide?
  - This is an open question. The future landscape of the trading system depends on the answer. At this point it is unclear ….

[1] Foreign direct investment includes either the acquisition or merger of a U.S. firm and the establishment of a new domestic firm in the United States. This article focuses upon mergers and acquisitions. The establishment of a new firm is termed a "greenfield" investment. "Foreign Direct Investment in the United States: An Economic Analysis." (Congressional Research Service, Report RS21857) (March 23, 2005).

[2] "U.S. Foreign-Investment Debate Goes Global." WALL STREET JOURNAL (May 30, 2006).

[3] *See generally*, "Economic Nationalism in Deals." FINANCIAL TIMES (October 13, 2006). This article focuses on how different national governments protect key stakeholders.

[4] "There's no end in sight for this year's parade of Megamergers." "Blizzard of Deals Heralds an Era of Megamergers." WALL STREET JOURNAL (June 27, 2006).

[5] "Mergers Ahead." WALL STREET JOURNAL (June 2, 2006).

[6] Chart, WALL STREET JOURNAL (April 4, 2006).

[7] "Mergers Snapshot." WALL STREET JOURNAL (May 10, 2006).

[8] "Merger Activity Sets Stage for Record Year." WALL STREET JOURNAL C11 (October 2, 2006). *See also*, "Blizzard of Deals Heralds an Era of Megamergers – Ample Credit, Foreign Rivals and High Commodity Prices Propel Push for Global Reach." WALL STREET JOURNAL (June 27, 2006). The value of mergers deals announced as of June has put 2006 on track to beat the record set in 2000.

[9] U.N. Conference on Trade and Development, WORLD INVESTMENT REPORT 2006 – FDI from Developing and Transition Economies: Implications for Development." 3 (UNCTAD 2006).

[10] Id.

[11] Id. at 14.

[12] Id. at 23.

[13] Id at 37.

[14] Id. at 107.

[15] "World Investment Report 2000 – Cross-Border Mergers and Acquisitions and Development." 117 (UNCTAD, 2000).

[16] U.S. Bureau of Economic Analysis (News Release -- June 2, 2006).

[17] New foreign direct investment into the United States remained strong through the first half of 2006. New foreign direct investment totaled $86.82 billion, essentially unchanged from the prior years. "Foreign Direct Investment in U.S. Remains Strong." WALL STREET JOURNAL C4 (June 2, 2006).

[18] "China Mobile May Buy European Wireless Company." WALL STREET JOURNAL (May 24, 2006). If completed this merger would have been the largest-ever foreign acquisition by a Chinese company ever.

[19] Foreign opposition to Indian companies has surprised Indian executives. "Frustrated Indian Companies Find Their Buying Efforts Thwarted." NEW YORK TIMES (June 1, 2006).

[20] "Tata Steel Offers $8 Billion for Corus." WALL STREET JOURNAL A6 (October 18, 2006). "India appears to be emerging as not just a place for companies to outsource, but also a place for entrepreneurs to build multinational companies." "An Indian Company Wants to Be Everywhere." NEW YORK TIMES (October 18, 2006).

[21] India's outbound deal volume is on the verge of passing the volume of inbound deals for the first time. FINANCIAL TIMES (October 4, 2006).

[22] Id.

[23] "As Foreign Investment Rises, India Addresses Security Concerns." NEW YORK TIMES (August 24, 2006).

[24] "Gazprom Stake Talk Lifts Centrica." FINANCIAL TIMES (June 9, 2006).

[25] "French Poll Shows Support for Corporate Protectionism." FINANCIAL TIMES (June 9, 2006).

[26] "Europe Urged to Stay Open to Russian Investment." FINANCIAL TIMES (October 13, 2006).

[27] "State-Owned Russian Bank Buys a 5% Stake in EADS." NEW YORK TIMES (September 12, 2006).

[28] "Gazprom Dashes Shtokman Hopes." FINANCIAL TIMES (October 10, 2006).

[29] "Bolivia Set to Seize its Foreign-Run Gas Fields." FINANCIAL TIMES (May 2, 2006).

[30] "U.S. Deplores Ecuador Move to Revoke Occidental Contract." FINANCIAL TIMES (May 17, 2006).

[31] "Russian Deal to Create World's Biggest Aluminum Maker." NEW YORK TIMES (October 10, 2006).
[32] "Trends and Recent Developments in Foreign Direct Investment." 16 (OECD Report, June 2006).
[33] "Statement by Mr. Angel Gurria at the OECD Meeting of the International Monetary and Financial Committee." 4 (Singapore 17, 2006.) http://www.oecd.org/dataoecd/16/51/37422695.pdf
[34] "Roundtable on Freedom of Investment, National Security and Strategic Industries." (OECD -- June 21, 2006). http://www.oecd.org/document/45/0,2340,en_2649_34529562_37156653_1_1_1_34529562,00.html
[35] "Preventing Investment Protection." (OECD website October 14, 2006). http://www.oecd.org/document/45/0,2340,en_2649_34529562_37156653_1_1_1_34529562,00.html
[36] "Beijing Revises Inflow Figures up to $72.4bn." FINANCIAL TIMES (June 9, 2006).
[37] "Sea of Cash Flooding into the Gulf Brings and Explosion of Investment Companies." FINANCIAL TIMES 4 (October 19, 2006).
[38] "Private Equity Growth Hitting Tax Revenues." FINANCIAL TIMES (October 13, 2006). The pending IPO of the Chinese bank ICBC will be the world's largest ever IPO. "Great Bank Sale." WALL STREET JOURNAL (October 18, 2006); "Big League Shuffle." WALL STREET JOURNAL C14 (October 19, 2006).
[39] "The Exon-Florio National Security Test for Foreign Investment." 5 (Congressional Research Service Report RS22197, February 23, 2006).
[40] Executive Order 11858 (May 7, 1975) and amended subsequently.
[41] 50 U.S.C. app. § 2170.
[42] "Implementation of Exon-Florio." (GAO Testimony -- GAO-06-135T -- October 6, 2006). Even prior to the Dubai Ports fiasco the Congress, immediately after 9/11, was concerned about national security issues under the Exon-Florio amendment. "Mitigating National Security Concerns under Exon-Florio Could Be Improved." (GAO Report – GAO-02-736 – September 2002).
[43] Various proposals to amend the current legislation are assessed in E. Graham & D. Marchick, U.S. NATIONAL SECURITY AND FOREIGN DIRECT INVESMENT (2006). They include requiring a mandatory filing requirement, clarifying "foreign control" and enhancing disclosure to the Congress.
[44] "Warner Blocks Bid to Revamp CFIUS." FINANCIAL TIMES (July 7, 2006).
[45] Id.
[46] "U.S. Firm Has Korea Up in Arms." NEW YORK TIMES (July 6, 2006).
[47] "Ukraine's Offshore Prospects." FINANCIAL TIMES (October 3, 2006).
[48] Forecasts are for the United States to attract almost 25% of worldwide FDI over the next five years. "U.S. to Retain Appeal for Foreign Investors." FINANCIAL TIMES (September 6, 2006).
[49] "Appetite for Foreign Equities Breaks Records." FINANCIAL TIMES (October 11, 2006).
[50] "U.S. Shrugs off Gas Setback as it Reassures Moscow on WTO." FINANCIAL TIMES (October 11, 2006). *See also*, "Bright Prospects Eclipse Concerns." FINANCIAL TIMES (Special Section – FT Investing in Russia) (October 10, 2006).