U.S. politics and greater regulation of inward foreign direct investment

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An analyst of U.S. foreign economic policy observes that each wave of antiforeign sentiment associated with the surge of foreign direct investment (FDI) coming into the United States washes ashore a flotsam of restrictive and exclusionary laws that recedes slightly or becomes buried and forgotten in the sand only to advance again with a new wave.[1] During the late 1980s, the controversy generated by the sharp rise of Japanese acquisitions in the United States washed ashore the latest flotsam of regulatory measures and further advanced the tangle of rules and regulations targeting inward foreign direct investment (IFDI). Of the various types of FDI, the present study is concerned mainly with the policy change toward foreign investment in an already established domestic business. This type of investment often involves merger or acquisition and is distinct from a ‘‘greenfield'' investment where the foreign investor establishes ‘‘from scratch'' a new business in the host economy.

This article explains why in recent years U.S. policy toward foreign acquisition of domestic firms and business operations has changed from one of benign neglect to one of discretionary restriction in some sectors of the economy. It also seeks to explain why this policy shift has taken the form that it has. By taking a ''new institutionalist'' approach, I examine the critical role played by elected policymakers in this change and argue that the transformation can be explained by the shifting calculations of these policymakers with respect to their perception of the national interest and their own political objectives. This policy dynamics is evident in the origin and the transformation in the composition, mission, and authority of the

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1. The metaphor is Robert Pastor's. See Pastor 1980, 220.

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Committee on Foreign Investment in the United States (CFIUS), the institution at the heart of the IFDI regulatory apparatus.

The policy terrain

From the end of World War II to the early 1970s, the character of U.S. policy toward foreign acquisition of domestic business in most sectors of the economy had been that of openness. With the exception of restrictive regulations covering investments originating from communist and a few other nations considered by the United States as pariah states, the policy was marked by the effective absence of the type of controls often employed by other countries.

The policy began to shift in the early 1970s when the Europeans reemerged as major buyers of and investors in U.S. firms and, for the first time, the Japanese joined their European counterparts in making significant direct investments in the United States. A more important factor in the policy shift, however, was the return in the form of direct investment of a portion of the Organization of Petroleum Exporting Countries' (OPEC's) huge petrodollar surplus, gained just after a politically motivated oil embargo on the United States.

The increased amount of IFDI, though still less than U.S. outward foreign direct investment (OFDI), alarmed the American public, encouraging elected policymakers in Washington to examine and remake the long dormant rules and regulations targeting IFDI. Although this regulatory effort quickly abated when the level of OPEC investments declined and a worldwide recession slowed the pace of international business activity, it resulted in the creation of CFIUS, a new mechanism for keeping closer track of foreign acquisition activities in the United States. More important, it prepared the ground for a more concerted effort during the second half of the 1980s, when a resurgence of IFDI occurred that was far greater in both amount and in impact on the U.S. economy.

Indeed, with the recovery of the world economy, the United States experienced new dramatic highs in IFDI during the 1980s. Besides the increase attributable to the heightened economic activity, at least two other reasons contributed to the resurgence. Early on, as U.S. economic dominance continued to erode, foreign firms—particularly, those based in Japan—increasingly invested in the United States for political reasons: owning production facilities in the United States would allow them to sidestep the increasing number of nontariff trade barriers. However, by the mid 1980s, the more localized political reasons for the increase in IFDI were not as significant as the fact that the markets for many goods and services had become truly international: more firms than ever before were relying on international mergers and acquisitions to establish strategic business alliances and to obtain technology, parts, and product variety.[2]

2. For a good account of the driving forces of FDI in this period, see Julius 1990.

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The resulting buying spree in the United States by foreigners—not just as an important economic phenomenon but as the stuff of newspaper headlines, popular magazine covers, and movie themes—reignited the effort to regulate IFDI. Propelled by the public's growing concern about "economic security," the policymakers in Congress and the White House became partners, if reluctant and often quarreling ones, in taking a more activist approach toward the regulation of IFDI. Through the Exon-Florio amendment to the Omnibus Trade and Competitiveness Act of 1988, the policy activists in Congress, with executive branch complicity, made it possible for the federal government to intervene in virtually any foreign acquisition in the domestic economy for reasons of "national security," a nebulous term that policymakers intentionally did not define in the amendment.

Of course, the United States has long had in place safeguards against foreign control of certain categories of domestic assets deemed vital to national defense. While many such safeguards exist in name only or are now anachronistic, U.S. law protects those assets nation-states traditionally have regarded as vital to war mobilization, such as those in energy production, communication, and transportation sectors. Other laws, which the government has enforced more vigorously, control the harmful effects of foreign investment that might involve the transfer of classified and sensitive information and technology related to the military. In addition, the Trading with the Enemy Act of 1917 gave the President the power to block military security-endangering foreign investment during a time of national emergency (namely, war). However, because the language of the Exon-Florio amendment is so vague, almost all sectors of the U.S. economy are now subject to regulation.[3]

Furthermore, as C. Fred Bergsten observes, what makes the Exon-Florio amendment a milestone in the evolution of U.S. IFDI policy is that, for the first time in U.S. history, the law established a mechanism for the federal government to screen IFDI.[4] The amendment authorized a new regulatory apparatus built around the strengthened CFIUS to routinely collect information on pending foreign investment that may have an impact on national security and, if deemed necessary, recommend that the President block or modify the investment, even if it is from a country allied with the United States.

While notifying CFIUS of pending foreign acquisition is supposed to be voluntary, because of the lack of clarity in the law, foreign investors have reported to CFIUS all kinds of investment, from the relevant to the irrelevant (for example, acquisition of a tulip grower and a swimming pool company).[5] More significantly, prudent mergers and acquisitions advisers recommend that investors report acquisitions of any domestic company that has cutting-edge technology or products, even if it does no defense-related business. They also advise reporting investment that the public might construe as being related, even indirectly, to national security.[6]

3. For examples of the legal community's consensus around this point, see Schmidt 1993, 802; Holmer, Bello, and Preiss 1992, 597; Greidinger 1991, 121–23; and Djurisic 1990, 199.

4. Bergsten 1991.

5. Telephone interview with a former staff member of CFIUS, Washington, D.C., July 1993.

6. Leah J. Nathans, "Meet Wall Street's New Bugaboo: CFIUS," *Business Week,* 12 June 1989, 91.

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The regulatory apparatus, however, almost always has approved investment it has reviewed. Since the passage of the Exon-Florio amendment, CFIUS has acted formally in only a small number of cases. Many "economic nationalists" in the United States have criticized CFIUS for this approval rate, leading them to discount the significance of the Exon-Florio amendment. Interestingly, the opponents of restriction on IFDI also downplay the impact of CFIUS, though for a different reason: they do not want to scare off incoming investments. Nonetheless, its impact cannot be judged by the number of investments blocked. Many U.S. investment bankers and lawyers believe that the very existence of this mechanism has deterred some transactions and may be discouraging others from being considered at all, especially those involving high-technology firms.[7] Even those critics who believe that CFIUS is "underpowered" acknowledge that the law may be having a restraining effect.[8] In fact, some U.S. Treasury Department data indicate that the amount of FDI in high-technology industries dropped significantly following passage of the amendment, though it must be borne in mind that investment in all sectors has declined since 1990.[9]

More important, CFIUS's investigatory scrutiny has led a number of foreign buyers to withdraw from "done-deals" or modify the terms of purchase. Invigorated by the powers granted by the Exon-Florio amendment, CFIUS has held extensive conversations with some foreign investors (again, not limited to those investing in firms doing defense-related work) to encourage them to support U.S. research and development and maintain domestic production, among other things.[10] Indeed, CFIUS's most important function may be jawboning foreign investors either to accept conditions on some kinds of investment or to withdraw their bids, while not officially blocking them.

To be sure, the United States remains one of the most liberal nations in the world in terms of its policy toward the right of establishment and national treatment of IFDI; and the recent slowdown of high-technology-related foreign acquisitions in the United States is probably due more to worldwide economic conditions, not the passage of the Exon-Florio amendment. Nonetheless, the recent policy development is more than inconsequential aberration. With the establishment of CFIUS and the subsequent strengthening of its powers, policymakers have expanded the purpose and scope of the U.S. IFDI policy and made government intervention in what was once a strictly private business transaction less extraordinary. The Exon-Florio amendment created a de facto screening mechanism that not only can bar but also has the power to set performance requirements for foreign investment in virtually all sectors of the U.S. economy based on vague national security grounds. Unlike

7. Telephone interviews with professionals working for Dillon Read, First Boston, Lazard Frères, Morgan Stanley, James D. Wolfensohn, and O'Melveny and Myers, September 1989–August 1992, New York.

8. See, for example, Martin Tolchin, "U.S. to Continue Watch on Bids from Abroad," *New York Times,* 8 November 1990.

9. Data cited in "Foreign Interest in Buying U.S. High-Tech Firms Slips," *Wall Street Journal,* 27 February 1991.

10. Nathans, "Meet Wall Street's New Bugaboo."

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presidential authority over FDI granted by the Trading with the Enemy Act, the Exon-Florio amendment grants this authority to CFIUS without regard to a nation's friendly status and without resorting to the emergency powers of government. The full impact of this change may not be felt until the economic recovery of Europe and Japan is complete and new capital from countries like South Korea and Taiwan begins to flow into the country.

Making sense of the policy change

What accounts for the recent changes in the U.S. policy toward foreign purchase of and investing in domestic businesses, and why has this policy shift taken the form that it has? The study of foreign economic policymaking offers many analytical approaches to answer these questions, though each has a differing level of success. Evaluations of a selection of approaches currently ascendent in the scholarly literature appear below.

Open polity approach

One of the approaches most commanding of scholarly attention employs "open polity" analyses of the impact of international change on politics and policies within nation-states.[11] Works utilizing this approach analyze the impact of integration into the international economy on domestic politics and suggest that foreign economic policy behaviors are driven by what Geoffrey Garrett and Peter Lange have called "economic pluralism," in which policy outcomes result from the policy preferences of powerful domestic actors.[12]

The attraction of the approach is that it is logically straightforward and quite useful in analyzing the demand side of the foreign economic policymaking process in advanced industrial democracies. Of course, with regard to the first question concerning the shift in policy, the approach would produce answers that are highly differentiated, particularly if it is employed alone.

For example, when analyzing the constellation of societal interests, some proponents of the open polity approach may contend that what is interesting about the present U.S. IFDI policy is the fact that it is still "liberal" in character and, in many sectors, less restrictive than ever. They would argue that a powerful coalition of interest groups tied to the global market has the political and financial resources to commit the U.S. government to maintaining a liberal investment environment.

However, other proponents of the approach may just as well emphasize the fact that the globalization of the U.S. economy also is producing protectionist demands. Even some of the most competitive high-technology firms are now demanding a more nationalistic foreign economic policy from Washington in order to defend their home market as well as win markets abroad. These analysts may argue that what

11. See, for examples, Milner 1988; Frieden 1989; and Rogowski 1991.
12. Garrett and Lange 1995, 627–28.

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explains the recent shift in U.S. IFDI policy is the successful lobbying effort of firms like these and others in society that share their interest. Indeed, one group of open polity analysts can identify interests favoring a more open policy toward IFDI, while another can identify interests demanding a more restrictive one.

While the open polity approach is very useful in differentiating important cleavages that exist in an advanced industrial democracy like the United States, it may not be as helpful in sorting out how the complex interaction of interests affect policy outcomes. As it is often the case with other types of interest-oriented research, the approach's policy analysis can become problematic when a group's interests are multiple or uncertain; the analyst searching only for group interests may not be able to discover an adequate explanation for policy formation.

For instance, with regard to U.S. IFDI policy, what is the interest of the domestic computer industry that sources many components for its products from foreign-owned suppliers? Is the industry best served by lobbying for restrictions on certain kinds of IFDI and for government subsidies and protection for its domestic suppliers to ensure a U.S. supply of components, or should it lobby for openness so that it can obtain its supplies at the best possible price? What are the interests of organized labor? Do unions consider foreign investment in domestic companies as a threat to workers' jobs or as a better alternative—or even a potential solution—to the loss of jobs to foreign competition and offshore production by U.S. employers?

Careful and judicious application of the approach could overcome these kinds of analytic problems in answering the question about the shift in policy, but the approach's limitations are more serious with regard to the question about the shape of policy. To be sure, the proponents of the open polity approach are interested in "domestic social actors' policy preferences, not states' policy instruments," as noted by Helen Milner.[13] As a consequence, however, they are sometimes too eager to make a direct connection between expected policy outcomes and internationally generated changes in the constellation of domestic economic preferences. As Garrett and Lange point out, in this eagerness they can miss something critical in the account of politics: institutions.[14]

Indeed, the proponents of the open polity approach treat institutions as endogenous or epiphenomenal. Nevertheless, political institutions play a critical role in determining how and what policy is made. While the open polity approach may provide a parsimonious way to analyze the impact of the global economy on the preferences and coalitional behavior of domestic interest groups, in answering the questions posed in this study—especially the second—it needs the help of an approach that concentrates on political institutions.

Institutional approaches

As it will be demonstrated, the recent changes in the U.S. IFDI policy have their origins in government rather than in the demands of interest groups. Hence, the more

13. Milner 1988, 292.
14. Garrett and Lange 1995, 628.

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useful tools for answering the questions posed in this study may be found among the approaches that emphasize the role of government institutions and officials embedded in these institutions in the policymaking process.

The international system approach. Prominent among the institutional approaches employed in the study of foreign economic policy is the ''international system'' approach. Drawing much from the neostatist literature, it provides some important insights as to how to think about the domain of national policymakers. Particularly useful are its focus on the internalization of the dynamics of the international system and its emphasis on state officials and institutions in formulating foreign economic policy.[15]

At first glance, this approach appears able to explain the central role played by those in government in taking the initiative to strengthen the security utility of IFDI policy in recent years despite the absence or uncertainty of interest group demands. Adherents of the approach would argue that, given the declining economic competitiveness of the United States and the potential threat to national security posed by some forms of IFDI, officials occupying key institutions of the state would take the lead role in enacting new regulations—whether restrictive or strategically encouraging toward certain investments—even without (or against) societal input. In this fashion, they reconcile the pressures of the international system with the critical role played by the state and state officials.

In this internalization process, however, the proponents of the international system approach tend to emphasize the ''state'' as an organizational structure at the expense of ''government'' as a creature of political exigencies. Hence, when they analyze foreign economic policymaking in the United States, they routinely exclude Congress from their conceptualization of the state. Their primary focus on the role of an elite group of executive branch officials and institutions means that they downplay how policy goals and institutions might be designed to serve the objectives of elected officials in Congress. Privileging foreign policy, these analysts sometimes overestimate the clarity of national interests and the rationality of the national response to international incentives and pressures while underestimating the conflict over policy ideas and the electoral imperatives that pervade even foreign policymaking in industrialized democracies.[16]

Given the fact that politicians, especially those in Congress, were the driving force behind the IFDI policy changes in recent years, we cannot answer the questions posed in this study without accounting for their role. After all, in advanced industrial democracies, it is elected policymakers who often choose among policy ideas and champion policy direction and, as Peter Cowhey argues, create the most enduring political rules and institutions.[17] It is they who determine the amount and types of discretion granted to foreign economic affairs bureaucracies in a manner consistent

15. Ikenberry 1988. See also Krasner 1978.
16. See, in particular, Lindsay 1992.
17. Cowhey 1990.

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with their respective political calculations and anticipated problems of overseeing delegated powers. Therefore, what is needed here is a different kind of institutionalist approach that is more sensitive to the fact that foreign policy goals are often promoted by politicians and that foreign policy apparatuses arise out of politics—in other words, are not simply givens.

The structural choice approach. A product of the multidisciplinary new institutionalist movement in social sciences, the "structural choice" approach provides the crucial intellectual tool necessary to analyze the dynamics of U.S. IFDI policy. Though the theoretical perspectives encompassed by this label are quite diverse, the approach in which I am interested draws much from the rapidly expanding body of political science works that focuses on how political processes shape policy, specifically by uncovering how different institutional forms affect policy outcomes.[18]

This body of research has concentrated primarily on the legislative institutions of government. It has explored the various ways that institutions bring stability to the inherently unstable world of majority-rule voting.[19] It has delved into how the legislature's internal organizations and rules might have formed in the first place and how legislators deal with issues of institutional choice. Also, by incorporating insights from the new economics of organization, the research has brought forward new knowledge about aspects of legislative behavior that involve nonvoting institutions and nonelectoral types of relationships, such as the oversight of bureaucratic agencies.[20]

Of particular interest here is a line of this research that focuses on policymakers' incentives to exert activist systemic control ("police patrol") over bureaucratic agencies to which they delegate power.[21] One of its central findings is that elected officials do not often prefer to actively supervise bureaucratic agencies. Agencies either generally comply with politicians' intent or do not damage politicians' interests. At the same time, activist supervision has opportunity costs: policymakers might do better by expending their limited resources on other objectives. The implication is that politicians will fashion the decision-making process and other procedures in agencies to which they delegate power in ways that will promote compliance with their goal.

Applying a similar logic to the study of the U.S. presidency, Terry Moe argues that the organizational imperatives of the presidential institution can be understood in much the same way as those of Congress, even though the presidency, unlike Congress, is a unified institution, serving the interest of only the President, not a

18. March and Olsen 1984. For a more "formal" variant, see Chubb and Moe 1990. Also, see Ferejohn 1991.

19. Moe 1993, 354–55.

20. Shepsle 1986. See also McCubbins, Noll, and Weingast 1987. For an excellent description and uses of the new economics of organization, see Moe 1984.

21. See, for example, McCubbins, Noll, and Weingast 1987, 1989. Also see McCubbins and Schwartz 1984.

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group of many coequals.[22] Compared with legislators, Presidents are spared the many problems of collective action and, hence, do not need to establish complex organizations for mitigating them. They do need, however, a bureaucracy that can be controlled from the top, since, after all, it is leadership that motivates Presidents.[23] In the politics of structural choice, then, Presidents are the only players who are motivated to seek a unified, coordinated, and centrally directed bureaucratic system.

What this approach offers to the analysis of U.S. IFDI policy is a special emphasis on elected policymakers in Congress and the White House and their political calculations. Of course, analysts specializing in U.S. foreign economic policy, such as Robert Pastor and I. M. Destler, have long pointed out the critical impact of Congress and the White House on the policymaking process.[24] However, among other things, they are more apt to emphasize the dynamics of interbranch politics that are often uniquely American or the presence or absence of interest group pressures on the legislative and presidential institutions than the fact that the presidency and Congress are "political" institutions populated by policymakers operating under electoral constraints. They tend to avoid discussing in a more generalizable way the institutional setting within which policy is made and the concerns of the constituents—not to be confused with demands from interest groups—that lead elected policymakers of an advanced industrial democracy to create institutions that address them.

The structural choice approach highlights the fact that beyond the fulfillment of the substantive goals of policy, gaining the electoral advantage is a critical motivation of elected policymakers—though, following Moe's logic, the President gives priority to the establishment of political power within government. Even in foreign policy matters, electoral incentives set some predictable parameters for choosing among competing bundles of collective goods and which programs to implement as policies.[25]

The approach also emphasizes how delegating power to an agent may resolve collective choice problems within Congress, within the executive branch, and between the two branches.[26] Delegation of power to bureaucratic agencies—such as CFIUS—by elected policymakers provides a way to deal with collective action problems as well as to lower direct political accountability for difficult decisions.[27] It allows the possibility of resolving many problems more easily than passing costly and uncertain new legislation.[28]

Of course, this delegation of power limits who can make decisions on behalf of the policymakers and, at the same time, sets implicit boundaries on the scope of

22. Moe 1993, 367.
23. Ibid., 364.
24. See Pastor 1980; and Destler 1986.
25. The argument here follows some of the ideas in Arnold 1990.
26. Cox and McCubbins 1993.
27. For the microeconomic foundation of the principal-agent model, see Ross 1973; also Spence and Zeckhauser 1971. For its application to the study of public bureaucracy, see Weingast and Moran 1983; also, from a different perspective, see Niskanen 1975.
28. Cowhey 1990, 244.

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subsequent actions.[29] It also gives the bureaucracy "first mover" advantages. In addition, policymakers must confront problems of hidden information and action by their agents as well as oligopolistic collusion among agents. Nonetheless, they can use a combination of careful scrutiny during the appointment process, monitoring, checks and balances, management by exception, and incentives to overcome the problems of delegation.[30]

The structural choice approach also permits a more systematic way of examining the claim that institutions are not very malleable. As Cowhey points out, in general, when political leaders create institutions, they make the barriers to major new policy initiatives steep because the political costs of such innovation may be great and highly uncertain.[31] Institutions stand as a barrier to reversing the fundamental priorities of prior political bargains embedded in the institution. Once elected policymakers begin to contemplate a major shift in policy, however, they often reconstitute the designated agency to embody new political bargains that permit various degrees of policy change.

Indeed, the structural choice approach can also provide a more detailed account of changes in policy direction than other materialist or national security-oriented approaches. Beyond the attempt to balance interest groups or advance the national interest, elected leaders champion specific policy directions to win supporters in the broader political game of building electoral power bases. These activities include strengthening their party and its "brand name." Here, policy ideas often provide politicians with strategies that suggest ways to maximize their political interests.[32] In this acknowledgment of policy choice, the structural choice approach takes more seriously the increasingly salient argument that ideas or cognitive elements have a powerful, independent effect on policymaking than does either the open polity approach, which subordinates policy ideas to the material interests of powerful groups, or the international system approach, which considers the national interest the primary dictator of policy selection.[33]

However, as a materialist approach, the strength of the structural choice approach is in its theoretical basis for predicting when and for what end institutions are created. For the purpose of this study, the most important utility of this approach is its concern with the question of which agency has been delegated power to discover the political roots of policy—a matter particularly salient to CFIUS.

CFIUS and the U.S. IFDI policy

The origin, form, and operation of CFIUS reveal the politics of structural choice shaping U.S. IFDI policy. CFIUS's institutional evolution has been propelled by the

29. Ibid., 242.
30. Ibid., 244.
31. Ibid., 243.
32. For a view that emphasizes the more autonomous aspects of policy ideas, see the pioneering application of the idea-oriented cognitive approach to foreign economic policy analysis in Odell 1979.
33. For an idea-oriented argument that takes institutions seriously, see Goldstein 1993.

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TABLE 1. *Flows of direct investment out of and into the United States, 1970–80 (in billions of U.S. dollars)*

Year	*Capital outflows*	*Capital inflows*	*Net outflows*
1970	7.6	1.5	6.1
1971	7.6	0.4	7.3
1972	7.8	1.0	6.8
1973	11.4	2.8	8.6
1974	9.1	4.8	4.3
1975	14.2	2.6	11.6
1976	12.0	4.4	7.6
1977	11.9	3.7	8.2
1978	16.1	7.9	8.2
1979	25.2	11.9	13.3
1980	19.2	16.9	2.3

Source. U.S. Department of Commerce, *Survey of Current Business,* various issues.

interests and strategies of the President and members of Congress. These elected policymakers have determined the amount and types of discretion granted to CFIUS in a manner consistent with their political interests and anticipated problems of overseeing delegated powers. The struggle among these policymakers during the mid-1970s, though brief, brought CFIUS into existence in the first place and, when these struggles reignited in a more intense way more than a decade later, redefined the scope and extent of CFIUS's authority and power. These institutional changes then produced the shifts in U.S. IFDI policy.

The birth of CFIUS

CFIUS was created during the tumultuous 1970s when economic and political factors converged to cause a surge of investments flowing into the United States. Only a small portion of this inflow was in the form of direct investment, but the sudden increase in foreign acquisition of domestic firms and business operations alarmed a U.S. public unaccustomed to even a hint of foreign investment activity in the postwar period. As Table 1 shows, inward foreign flows were still smaller than were outward flows. However, the xenophobic sentiment of the U.S. public—reflected in as well as fanned by the alarmist news coverage of the IFDI issue—drove

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elected officials in Congress and the White House to reconsider the long-forgotten IFDI policy.[34]

The oil price hikes of the 1970s were the most obvious drivers of IFDI. However, even prior to the oil price shocks, the increased foreign acquisition activities in the United States—encouraged in part by dollar devaluations—had caught the attention of many Americans already troubled by the country's balance of trade problems.[35] Nonetheless, clearly, what jolted policymakers to take stock of the situation was the adverse public reaction to the petrodollar-driven foreign purchases of domestic assets following the first oil shock.

When OPEC countries began investing in the country after having imposed a politically motivated embargo on oil exports to the United States, the public became concerned. The media made much of the rapid inflow into the country of capital controlled by governments that had engaged in economic war against the United States and whose actions had aided in producing a deep global recession. Some reports suggested the possibility that these investments were being driven by some ulterior political motives to do further damage to the U.S. economy.[36] The anxiety fanned by such speculation was deepened when even the most conservative early projections of OPEC earnings suggested that OPEC's profits could range in the hundreds of billions of dollars, allowing Arab investors to obtain controlling interests in many domestic businesses. According to the studies conducted by the World Bank, OPEC would amass as much as $650 billion in surplus by 1980.[37]

Troubled for the first time in the postwar period about the potentially negative impact of IFDI on U.S. national interests and mindful of the widespread resentment of foreign money coming into the country, the policymakers in Congress examined the long-neglected rules and regulations targeting foreign investment and, despite the White House's reluctance to cooperate, introduced measures to regulate more tightly its inflow. The most important result of this legislative activism was the creation of CFIUS.

Congressional activism and the White House. Those who were most eager to revamp IFDI policy were not members of some aggrieved interest group or vigilant guardians of national security but members of Congress from districts and states receiving the bulk of new investments.[38] Reacting to the grumbling in their

34. For examples of this coverage, see "A Big Foreign Stake in U.S. Industry," *Fortune,* August 1971, 118; "From Oil to Baseball to Beer, Foreign Firms Invade U.S.," *U.S. News and World Report,* 26 June 1972, 60–63; and "The Foreign Invasion," *Time,* 2 April 1973.

35. Richard S. Frank, "Improved Balance-of-Payments Prospect Prompts End to Controls on Foreign Investment," *National Journal,* 2 June 1973, 809–10.

36. See, for example, "Will the Arabs Use the Money Sword?" *Forbes,* 15 December 1973, 31. See also Arnaud de Borchgrave, "We Don't Want to Ruin You," *Newsweek,* 7 October 1974, 53–54; Richard N. Cooper, "The Invasion of the Petrodollar," *Saturday Review,* 25 January 1975, 10–13; and "New Invasions by Oil Money: 'Take-over' Fears Rise Again," *U.S. News and World Report,* 3 March 1975, 21–23.

37. Cited in Pastor 1980, 238.

38. Judith Miller, "Foreign Investment in the U.S. Economy Arouses Congressional Concern: The Buying of America," *The Progressive,* May 1974, 42–44.

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districts about the invasion of the country by rich foreign interests, they began to introduce bills ranging from the prudent to the xenophobic. Though these policy entrepreneurs did not have access to the accurate information needed to take sound policy positions, they had little to lose. Indeed, they had something to gain politically by taking the populist antiforeign position. Given the widespread feeling that IFDI was a threat, they had a great incentive to draw attention to the investment issue and to grandstand.[39]

While the White House was mindful of the new vulnerability of the United States to international economic forces and aware of the widespread apprehension toward IFDI, it did not feel the same sense of urgency that many in Congress did about taking some significant policy action. The President and his aides had access to Treasury and Commerce Department data not initially available to Congress showing that the country was in no real danger of being economically ‘‘taken over.’’ The White House was, therefore, more concerned about not jeopardizing the inflow of portfolio investments that constituted the vast majority of the capital inflow.[40]

However, the White House's attitude toward the IFDI issue was driven by not only its assessment of the national interest—something the international system approach would emphasize—but also its reluctance to accede to any congressional proposal that might complicate presidential control over foreign economic policy (such as that introduced by Senator Howard Metzenbaum).[41] The White House acted as the structural choice approach would predict in its concern over such an important aspect of policy.[42] Therefore, the Nixon—and later the Ford—administration was eager to quash legislative activism.

To this end, the White House shared with Congress the reassuring treasury and commerce data. It also released executive branch studies showing the adequacy of the existing IFDI regulatory regime. However, the White House could not suppress the policy activism triggered by public anxiety. In fact, in order for the White House to maintain Congress's confidence in the President's handling of IFDI policy, it had to accede to at least some congressional policy proposals. The new changes in IFDI policy, then, resulted from the give-and-take between the White House and Congress.

In the policymaking process, if the White House could not prevail over Congress on the substantive aspect of policy, its top priority was securing the maximum level of executive control in a reactivated area of foreign economic policy. That is, the White House sought to maximize its discretionary power over whatever regulatory measures Congress managed to enact into law. At the same time, the policymakers in Congress were not entirely unsympathetic to the White House's desire to protect executive control. Through their policy activism, they sought both the President's attention on an issue on the minds of voters and some valuable exposure for them-

39. On the value of grandstanding, see Mayhew 1974, 43–79.
40. Cohen 1986, 134.
41. Pastor 1980, 239.
42. Personal interview with a former senior aide to President Nixon, New York, July 1989.

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selves as issue leaders. They had neither the political incentive nor the resources to take policy control away from the White House.

In fact, because the executive has some degree of control over both agenda and initially hidden information, as proponents of the international system approach often point out, Congress lacked the thoroughgoing knowledge of the nature and extent of the IFDI problem that would have enabled it to impose its own policy preference on the President. Congress could, however, propose policy initiatives that were sufficiently objectionable to the President to evoke a response to its concerns and requirements.

As policy entrepreneurs caught up in the politics of structural choice, the goal of congressional policymakers was to garner favorable publicity for themselves before the voters as part of the larger electoral game. Their modus operandi was to rewrite or threaten to rewrite laws and to create or threaten to create new regulatory rules, guidelines, and procedures. In fact, the policy compromise between Congress and the President was struck at this meeting point of the White House's attempt to maximize the level of executive control over IFDI policy and Congress's minimal faith in the executive bureaucracy.

Importantly, interest groups were quite passive throughout the struggle between the elected policymakers in Congress and the White House. They did not even offer comments at the relevant congressional hearings until the contending policymakers urged them to take the side of Congress in the policy dispute.[43]

Some groups representing international business interests expressed support for maintaining a free investment environment and voiced the fear that restricting IFDI could invite retaliation against U.S. investments abroad. However, other than releasing some pronouncements to that effect in response to White House prodding, they did not undertake other, more proactive measures in support of their policy position.[44] Perhaps their policy activism was tempered by the knowledge that many countries already had extensive regulations targeting U.S. investment in their economies and the feeling that those barriers were formidable.[45]

Like other interest groups, labor unions did not much enter the policymaking process. This was partly due to labor's ambivalence toward international mergers and acquisitions. Unions had traditionally opposed U.S. firms' acquisition of production assets abroad because they viewed outgoing direct investments as a cause of domestic job loss; however, the labor leadership was well aware that some incoming direct investments create new jobs. Only the urging of the policy activists in Congress caused the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to issue a belated statement decrying the ills of foreign takeover of domestic enterprises.[46]

43. Paul Lewis, "Welcome Mat Still Out for Foreign Investors in the U.S.," *National Journal,* 10 January 1976, 32–33.

44. Pastor 1980, 241–42.

45. This view was expressed to the author by a veteran business lobbyist.

46. See Louis Kohlmeier, "Concern over Corporate Takeovers," *National Journal,* September 1974, 1431.

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Creation of CFIUS. Unable to pacify Congress with data and studies arguing the adequacy of the existing regulatory regime, the White House had to make a substantial and publicly visible move. It pledged to Congress that it would create a high-level interagency committee, reporting directly to the President, charged with monitoring incoming investments. While the powers of the proposed committee, CFIUS, would not approach those of the kind of screening agency some in Congress had proposed, the pledge to create the committee was a politically meaningful gesture to the policy entrepreneurs in Congress who had invested considerable political capital in the IFDI issue. After all, the establishment of CFIUS added a new bureaucratic entity to the executive branch that the President did not really want and created a potential entry point for congressional intervention in the President's conduct of IFDI policy.

When the White House outlined the plan for establishing CFIUS, policymakers in Congress recognized the gesture for what it was and welcomed the proposal. The favorable response moved the White House to seek immediate implementation of the plan.[47] As the structural choice approach would predict, in order to preempt any congressional input in the design of the monitoring mechanism, the White House acted with great dispatch in executing the plan. Instead of waiting for authorization from Congress, the President took action unilaterally and established CFIUS by executive order.

In spring 1975, President Ford announced the committee's creation. The executive order authorized CFIUS to, among other things, analyze trends in foreign investment coming into the country, negotiate advance consultations with foreign governments desiring to acquire assets in the United States, and study new legislation or regulations targeting such investment. As it was originally staffed, CFIUS was chaired by the undersecretary of treasury. Other members included the State Department's assistant secretary for economic affairs, the deputy secretary of defense, the undersecretary of commerce, the executive director of the council on international economic policy (CIEP), and the assistant to the President for economic affairs.[48]

While the duties of the committee appeared important and its membership was impressive, CFIUS was more significant for its political function than its putative policy function. It resolved, at least for the time being, the needs of the President and legislators caught up in the politics of structural choice: CFIUS was an institutional solution that reconciled the conflict between the President's internationalist inclination and desire to keep as much executive control as possible over foreign economic policy, on the one hand, and the congressional policymakers' attempt to deal with voter concerns and empower the government with a straightforward, nonextraordinary means to review incoming direct investments, on the other.

In short, the creation of CFIUS established a kind of policy equilibrium. Later, when the level of OPEC investment declined and a worldwide recession slowed the

47. Pastor 1980, 240.
48. Ibid.

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TABLE 2. *Flows of direct investment out of and into the United States, 1980–90 (in billions of U.S. dollars)*

Year	*Capital outflows*	*Capital inflows*	*Net outflows*
1980	19.2	16.9	2.3
1981	9.6	25.2	−15.6
1982	1.0	13.8	−12.8
1983	6.7	12.0	−5.3
1984	11.6	25.4	−13.8
1985	13.2	19.0	−5.9
1986	18.7	34.1	−15.4
1987	31.1	46.9	−15.8
1988	16.2	58.4	−42.2
1989	31.7	72.2	−40.5
1990	24.0	46.1	−22.1

Source. U.S. Department of Commerce, *Survey of Current Business,* various issues.

pace of international business activity, the incentives for regulatory effort quickly evaporated. The equilibrium was disturbed only when the surge of Japanese investments triggered a new round of more intense policy struggle during the late 1980s.

Japanese direct investments and the remaking of CFIUS

With the recovery of the world economy, the United States experienced new dramatic highs in the level of incoming direct investment during the 1980s. As Table 2 shows, for the first time in the postwar period, the amount of U.S. IFDI consistently outpaced the amount of OFDI. In fact, the role of IFDI in the U.S. economy increased significantly in this period, as shown in Table 3. Although direct investments were flowing in from all parts of the world, Tables 4 and 5 show that the rapid increase of those coming in from Japan was especially notable. By the late 1980s, the magnitude of the inflow from Japan began to rival that from Great Britain, the perennial top investor in the United States. In terms of the total market value of investments, the British owned by far the largest amount of domestic assets.[49] However, with the economic power of Japan revealing itself so dramatically in the Japan–U.S. bilateral

49. For example, see the section entitled "The role of Japan" in Graham and Krugman 1991.

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TABLE 3. *The role of foreign direct investment (FDI) in the U.S. economy, 1980–90*

Year	*FDI stock ratio*[a]	*Percentage change*
1980	3.5	34.6
1981	4.0	14.3
1982	3.9	−2.5
1983	4.2	7.7
1984	4.8	14.3
1985	5.3	10.4
1986	6.3	18.9
1987	7.4	17.5
1988	8.6	16.2
1989	10.0	16.3
1990	10.5	5.0

[a]FDI stock, defined as total investment, divided by total net worth of U.S. nonfinancial corporations.
Source. Figures from Graham and Krugman 1991, 12, based on data from various issues of U.S. Department of Commerce, *Survey of Current Business* and Federal Reserve Board, ''Balance Sheet for the U.S. Economy 1945–1990,'' March 1991, 39.

trade imbalance, many in the United States became concerned about Japanese investments, to the exclusion of all others.[50]

The public began to feel as if the Japanese were ''taking over.'' According to a public opinion survey conducted by the polling firm of Smick-Medley and Associates in 1988, 73 percent of respondents believed the Japanese invest the most in U.S. business, while only 3 percent believed the British, and 2 percent believed the Germans, do.[51] This misperception helped to reopen for negotiation the IFDI policy compromise reached in the 1970s.

The ''Japanese challenge.'' While world events were moving rapidly toward the termination of conflict between the East and the West during the 1980s, many in the United States were becoming concerned that the security problem of the future could take the form of economic threat from trading partners, especially Japan.[52] With the ever-increasing bilateral trade deficit with Japan, many Americans were

50. For examples of views critical of Japanese direct investment in the United States, see Burstein 1988; and Frantz and Collins 1989.

51. Cited in Glickman and Woodward 1989, 32.

52. See ''Japan Survey,'' for *New York Times*/CBS News/Tokyo Broadcasting System, 5–8 June 1990 (United States) and 31 May–7 June 1990 (Japan); results summarized in *New York Times,* 10 July 1990.

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TABLE 4. *Direct investment position in the United States by country of ultimate beneficial owner, 1980–90 (in billions of U.S. dollars)*

Year	*United Kingdom*	*Holland*	*Canada*	*Japan*
1980	14.0	19.1	12.2	4.7
1981	18.6	26.8	12.1	7.7
1982	28.4	26.2	11.7	9.7
1983	32.2	29.2	11.4	11.3
1984	38.4	33.7	15.3	16.0
1985	43.6	37.1	17.1	19.3
1986	55.9	40.7	20.3	26.8
1987	75.5	46.6	24.7	34.4
1988	95.7	48.1	26.6	51.1
1989	105.5	56.3	28.7	67.3
1990	108.1	64.3	27.7	83.5

Source. U.S. Department of Commerce, *Survey of Current Business,* various issues.

beginning to see Japan's trading practices as beyond unfair and actually harmful to the United States.[53] At the same time, Japan's economic mastery was expanding into a number of key high-technology industries as well as international finance, developments that made Japan appear a possible political challenger to the United States.[54] This view of Japan fueled a new kind of politics in Washington that combined old-fashioned protectionism with concerns about economic security.

In fact, by the mid-1980s, Congress was entertaining a number of punitive legislative proposals against Japan's competitive practices.[55] Political candidates of both parties, but especially the Democratic party, were trying to exploit the economic grievances against Japan for electoral purposes.[56] One of these grievances was that the United States had lost a significant portion of its manufacturing base in the high-technology sector to what was widely perceived as Japan's ''adversarial commercial practices,'' including what some argued was the deliberate Japanese effort to buy up vulnerable U.S. firms in this sector.

As Table 6 indicates, the Japanese were not alone in acquiring and investing in U.S. high-technology firms. Even so, critics of Japan made much of the data presented here in Table 7, which appeared to support the argument that the Japanese

53. *Los Angeles Times,* 24 October 1985, 21.
54. Typical of works with an adversarial view of Japan is Prestowitz 1988.
55. Destler 1992, 88–97.
56. For a Democratic view of the trade imbalance, see *Congressional Quarterly Almanac 1985,* 253.

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TABLE 5. *Distribution of direct investment in the United States by country of ultimate beneficial owner, 1980–90 (percentage of total stock)*

Year	*United Kingdom*	*Holland*	*Canada*	*Japan*
1980	16.6	25.0	14.4	6.2
1981	17.2	24.9	11.0	7.1
1982	23.0	21.0	9.3	7.8
1983	24.0	21.3	8.2	8.2
1984	23.3	20.5	9.3	9.7
1985	23.9	19.7	9.1	10.4
1986	25.4	18.5	9.2	12.2
1987	28.7	17.7	10.1	13.1
1988	30.4	15.3	8.4	16.2
1989	28.2	15.1	7.7	18.0
1990	26.8	15.9	6.9	20.7

Source. U.S. Department of Commerce, *Survey of Current Business,* various issues.

had made acquisitions in the high-technology sector a special priority. They pointed out that the Japanese had invested in numerous capital-starved but promising start-up companies in that sector, charging them with acquiring advanced technology ''on the cheap'' with the hope of eliminating U.S. competition in key industries.[57]

When combined with the perennial trade grievance against Japan, this view of Japanese investments as an economic security threat increased the political payoff for antimarket policy measures against IFDI; and, as the level of Japanese direct investment reached record highs, members of Congress began proposing restrictive legislations. Though their bills did not specifically name Japan, ''IFDI'' clearly was a code term for Japanese investment in particular. The congressional legislative effort came into focus when, in 1986, a giant Japanese computer and semiconductor manufacturer attempted to purchase the venerable but ailing U.S. semiconductor firm, Fairchild Semiconductor Corporation. Indeed, the Fairchild affair marked a new turning point in U.S. IFDI policy.[58]

57. Tolchin and Tolchin 1988, 11. For other discussions of U.S. competitiveness in this atmosphere, see Zysman 1989; and Kearns 1992.

58. A similar view is expressed by Dale C. Turza and Anthony F. Essaye, ''New Foreign Investment Provision Has Potential for Broad Restriction: The Exon-Florio Amendment,'' *Federal Bar News and Journal,* March/April 1990.

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TABLE 6. *High-technology acquisitions in the United States by country, October 1988–April 1992*

Country	*Number of acquisitions*
Japan	399
United Kingdom	65
France	41
Germany	17
Canada	14
Switzerland	14
Taiwan	11
Australia	7
South Korea	4
Netherlands	3
Other	33
Total	608

Source. Economic Strategy Institute Database, May 1992. Appended to the testimony of Linda M. Spencer before the House Armed Services Committee, Subcommittee on Investigations, *Defense Department's Role in Reviewing Foreign Investment in U.S. Defense Companies,* 102d Cong., 2d sess., 12 August 1992.

Fairchild-Fujitsu controversy. In October 1986, Fairchild announced that the firm, the progenitor of numerous U.S. high-technology companies, was to be sold to Fujitsu Limited.[59] Though ailing, Fairchild's defense-electronic subsidiary provided over a hundred million dollars of high-speed circuitry annually to the U.S. defense and intelligence community. The announcement shocked many in the United States.

Even in the ideologically pro-market administration of Ronald Reagan, some were concerned that the Japanese were acquiring one of the U.S. government's key suppliers of vital surveillance and communications devices.[60] However, others saw in the transaction the natural functioning of the market and opposed any interference by the administration.

Congress, under Democratic control, was less ambivalent. When the deal became known to the public and the reaction was overwhelmingly negative, Congress was eager to demonstrate that it would not allow such a transaction, which it characterized as a possible threat to national security, to go through.[61] Members of Congress were well aware that the proposed transaction had sparked much anti-Japanese

59. For an excellent account of the Fairchild affair, see Warshofsky 1989, 301–33.
60. ''Two in Cabinet Fight Sale to Japanese,'' *New York Times,* 12 March 1987.
61. Michael Malone, ''Fear and Xenophobia in Silicon Valley,'' *Wall Street Journal,* 23 February 1987.

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TABLE 7. *Japan's high-technology acquisitions in the United States, October 1988–April 1992, by industry*

Industry	*Japanese acquisitions*	*Total foreign acquisitions*	*Japanese acquisitions as a percentage of all foreign acquisitions*
Advanced materials	40	63	63
Aerospace	19	32	59
Biotechnology	17	27	63
Chemicals	25	54	46
Computers	93	142	65
Electronics	33	56	59
Semiconductor equipment	30	39	77
Semiconductor	51	60	85
Telecommunications	31	64	48
Other	60	71	85
Total	399	608	66

Source. See Table 6.

editorializing in leading U.S. newspapers. For example, William Safire, in opposing the sale of Fairchild to Fujitsu, reminded the readers of his column that "Japanese businessmen were accused of stealing secrets from IBM and are suspected of technology diversions through Hong Kong."[62] Up to that point, no Japanese investment in the United States had received such adverse media coverage, which had the effect of inciting further public indignation.

The congressional hostility to the transaction, as well as the opposition from some quarters of the administration, made a deep impression on the Japanese, who prefer business dealings to be discreet and cordial.[63] Discouraged, Fujitsu backed out of the deal.

Of course, the irony of the Fairchild-Fujitsu controversy was that Fairchild was not a U.S. company when it received Fujitsu's bid. The firm had been purchased years ago by a French firm, Schlumberger Ltd., which ran it as a wholly owned subsidiary. It was also questionable, despite the rhetoric of those opposed to the deal, whether Fairchild was producing products that were somehow indispensable to national security.

62. William Safire, "Goodbye, Mr. Chips," *New York Times,* 26 January 1987.
63. Donna K. H. Walters and William C. Rempel, "Trade War: When Chips Were Down," *Los Angeles Times,* 30 November 1987.

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The real driving force behind the controversy, then, was the political advantage many elected policymakers perceived in meeting the Japanese economic challenge. The Fairchild affair served to galvanize those, especially in Congress, who were eager to overhaul IFDI policy to meet the new imperatives of the politics of economic security. The stage was set for revisiting the compromise that gave birth to CFIUS during the Ford administration.

The Bryant amendment. By the time Fujitsu retracted its offer to buy Fairchild, elected policymakers were once again reexamining U.S. IFDI policy. In fact, months before the Fairchild transaction was announced, there were indications that the earlier policy compromise was breaking down.

In May 1986, Representative John Bryant, a Texas Democrat, sponsored the Foreign Investment Disclosure and Reciprocity Act.[64] The primary goal of this bill was to stiffen the reporting requirements on foreign investment, but beyond the disclosure objective, Bryant proposed to restrict any new foreign investment unless U.S. citizens were able to invest in the foreign investor's home country on equal terms.

The House hearings on the Bryant bill were just beginning when the Fairchild-Fujitsu deal was announced. Although there was some hesitation about how to deal with the Fairchild-Fujitsu situation, the Reagan White House quickly came out against the bill. It was especially concerned about the bill's tough reciprocity provision, which it saw as possibly discouraging IFDI and encouraging retribution from other countries.

In opposing the reciprocity provision, the White House was vigorously supported by corporate interests, as the open polity approach would predict, since business was now more closely tied to the global economy. This was especially true for the securities industry, which would bear the immediate cost of the Bryant proposal. However, the divergent competitive strategies of U.S. firms undercut somewhat the business lobbying effort against the bill.[65] For example, though they made no effort to support the bill, many domestic high-technology companies made little attempt to oppose it, because they believed that some of the retaliatory measures proposed, if judiciously employed, might work to their advantage by creating investment opportunities in protected markets abroad.[66]

As in the 1970s, the labor lobbying effort was inconsequential. The labor interest remained split between those who viewed foreign investment as a potential source of jobs and those who feared that foreign firms, particularly in the manufacturing sector, would displace union with nonunion jobs. Even the United Automobile Workers (UAW), which had fought hard to induce Japanese direct investments in the automotive sector, was ambivalent about the results: ''transplant'' production facilities

64. The history of the Bryant amendment is well covered in Tolchin and Tolchin 1988, 223–46.
65. Personal interview with a business lobbyist representing some of the largest U.S. industrial firms, Washington, D.C., January 1993.
66. Personal interview with a government policy analyst working for a microelectronics consortium, Bryn Mawr, Penn., September 1990.

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were having mixed effects on the welfare of unionized workers.[67] In principle, the labor unions supported the Bryant proposal.[68] They made little effort, however, to convert their policy position to meaningful political action. As one veteran industry lobbyist who participated in various congressional hearings on IFDI put it, "[Union] guys were nowhere to be seen."[69]

The President's strong objection to the reciprocity provision forced the bill's sponsors to drop the provision and resubmit the bill in January 1987 as the Foreign Ownership Disclosure Act.[70] The modified bill, however, did not lessen the White House's opposition to other elements of the proposal. When Bryant managed to attach it as an amendment to the omnibus trade bill then under consideration in the House Energy and Commerce Committee, the White House tried to have the amendment killed in committee with the argument that the proposal threatened job creation. The argument almost succeeded.

With the flare-up of the Fairchild controversy, however, the amendment gained new life. It drew support from those opposed to the Fairchild-Fujitsu deal. With new vitality, the amendment cleared the House floor and found a Senate sponsor in Tom Harkin, a Democrat from Iowa. Harkin had both presidential ambition and a stake in the economic competitiveness issue, which was now central to the Democratic party's national electoral strategy in 1988.

The White House, alarmed that the amendment had survived the House process, pulled no punches in the Senate. With the help of Senator John Danforth of Missouri, it hinted that the amendment would force the President to veto the entire trade bill.[71] This was a threat the Democrats could not take lightly. After all, they had much to lose politically. The legislation promised to buttress the Democratic party's claim to be tough on unfair foreign economic competition, and the party already had invested much in supporting it. Not surprisingly, given the determined opposition of the President and the priority given to the safe passage of the larger trade bill by Democratic leadership, the Senate voted down the Bryant amendment.

The fate of the Bryant amendment demonstrated to policy activists the difficulty of getting through Congress a bill that would affect all IFDI in a blanket fashion. Especially difficult would be passage of any bill that might have a chance of inviting significant retaliatory action against U.S. investments and business activities abroad and/or inhibiting job creation in the United States. Such legislation would create many losers among constituents and hence be met with the opposition or ambivalence of those in Congress who would want to avoid or straddle a potentially career-ending vote.

However, the reactions to both the Fairchild-Fujitsu transaction and the Bryant amendment were instructive. The executive branch division caused by the first and

67. Glickman and Woodward 1989, 188–222.

68. See the letter from Howard D. Samuel, president, and David Mallino, director of legislation, of the Industrial Union Department of the AFL-CIO to members of Congress, 28 April 1987, as cited in Tolchin and Tolchin 1988, 238.

69. Personal interview, New York, November 1992.

70. *Congressional Record, House,* 7 January 1987, H 157 and E 71.

71. *Congressional Record, Senate,* 17 July 1987, S510157.

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the relative effectiveness of the nonpartisan security argument for the second demonstrated that concerns about security and the fear of an ascendent Japan could bring together diverse political groups while neutralizing others. Moreover, the widespread indignant reaction to the Fairchild-Fujitsu deal revealed that the idea of more tightly regulating IFDI had undeniable populist appeal, whatever its demerits economically.

Indeed, as one analyst notes, the view that the public was concerned about increased foreign ownership of domestic firms received such frequent airing in the media as to become conventional wisdom.[72] Public opinion polls conducted in this period support this observation. The Roper Organization in March 1988 found that 84 percent of respondents thought the purchase of American assets by foreigners was not "a good idea for the U.S." The same poll showed that a 49 to 45 percent plurality disapproved of new jobs in foreign-owned firms, and at least 72 percent thought that foreign investments should be restricted.[73] Another 1988 opinion poll conducted for *The International Economy* reported that 74 percent of Americans surveyed believed that foreign investment had lessened U.S. economic independence.[74] This poll also revealed that 78 percent favored a law restricting foreign investment in the United States and 89 percent wanted foreign investors to register with the government. Other polls reported similar findings.[75]

Hence, despite the defeat of the Bryant amendment, being tough—or appearing to be tough—on the IFDI issue continued to have great allure for many politicians. The security-minded restrictionist policy stance toward IFDI held the promise of attracting media attention and votes from a broad electoral base with relatively low-cost and symbolic policy measures. Compared with providing more costly distributive policy measures that would require the delivery of specialized benefits to help concentrated groups, possibly at the expense of others (as with protectionist trade policies, for example), appearing to be tough on IFDI that might threaten the well-being of the United States had a similar political attraction for politicians as appearing to be tough on crime.[76] This is one of the key reasons why the Exon-Florio amendment succeeded while the Bryant amendment failed.

The Exon-Florio amendment. While the Bryant amendment was drawing fire from the White House and elsewhere, Representative James Florio and Senator James Exon, both Democrats, introduced another omnibus trade bill amendment

72. Ott 1989, 48. He cites Cindy Skrzycki, "America on the Auction Block," *U.S. News and World Report,* 30 March 1987, 56–58; Donald Baer, "Anxiety in America's Heartland," *U.S. News and World Report,* 25 April 1988; Jaclyn Fierman, "The Selling of America (cont'd)," *Fortune,* 23 May 1988, 54–64; Michael Kinsley, "Deficits: Lunchtime is Over," *Time,* 3 October 1988, 27–28; and John Burgess, "British Investment in the U.S. Out-paces Japan's, Study Finds," *Washington Post,* 27 January 1989.

73. The survey data are cited in Ott 1989, 48.

74. The survey data are cited in Omestad 1989, 119.

75. See the polls by Smick Medley and Associates, cited in Fierman, "The selling of America (cont'd)," 54, and by Hamilton, Frederick and Schnelders, cited in Holman Jenkins, Jr., "Anxiety Rises as Foreigners Buy American," *Insight,* 28 March 1988, 45.

76. A view expressed to the author by a former ranking-member of the House. Washington, February 1993.

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targeting IFDI. This amendment was of a different type than the ill-fated Bryant amendment. Instead of blanket regulation targeting all foreign investment, it gave discretionary power to the President to screen out only undesirable investment. In this amendment, the policy activists in Congress found a successful vehicle by which to obtain the President's cooperation in addressing an issue that they felt was increasingly on the minds of voters.

As originally submitted, among other things, the amendment would authorize the President to block any foreign takeover of a U.S.-based firm that compromised the essential commerce of the United States. The term "essential commerce" drew immediate White House opposition. It was too vague. The administration argued that the Exon-Florio amendment would undermine its objective of reducing trade-related investment measures (TRIMs) in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).[77]

In response to the White House opposition, the amendment's sponsors inserted the phrase "harm to national security" into the text of the proposed legislation. Though this did nothing to address the White House's concern that the amendment might undermine its trade policy, the strengthening of the national security utility of the amendment gave the White House a reason, if not to like, then at least not to object so strenuously to the amendment. It proposed something that would appeal to any President: new discretionary power at the disposal of the White House to be used in an increasingly important area of foreign economic policy.

Nonetheless, given the continuing White House opposition to the term, the House–Senate conference committee removed the "essential commerce" clause from the final statute. Realizing that it had to acquiesce to some kind of congressional action on the IFDI issue and fearing the alternatives, the White House accepted the amendment.[78]

The dropping of the essential commerce clause was hardly a victory for the White House, though, because the new national security language left deliberately vague what criteria would be used to decide whether to initiate a government investigation. The only clue was an ambiguous statement that the statute would apply to "products or key technologies essential to the U.S. defense industrial base."[79] Thus, national security would have to be defined on a case-by-case basis by the White House, while being second-guessed by Congress. Indeed (despite the discretion granted to the White House), as the structural choice approach would predict, Congress preserved through the operative language of the legislation its *ex post* power to judge the use of delegated power.

Encountering little support or opposition from the interest groups that had offered comments on the far more sweeping Bryant proposal, the Exon-Florio amendment was passed into law along with the Omnibus Trade and Competitiveness Act of 1988. As adopted, the amendment required the President to review mergers and acquisi-

77. Telephone interview with a former official of the Treasury Department who served under Presidents Reagan and Bush, September 1993.

78. Ibid.

79. *Congressional Record, House,* 20 April 1988, H2118.

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tions involving foreign interests when they had a potential impact on national security. It gave the President authority to block deals that threatened to impair national security and, without imposing any time limit, compel divestment if the circumstance required it.[80]

Though many who wanted a tougher law as well as those who opposed any restriction tend to minimize the impact of the Exon-Florio amendment on the overall liberal character of U.S. IFDI policy, it cannot be disputed that the vagueness of the new law created for foreign investors an atmosphere of uncertainty. Because many points in the law are open to interpretation, no one could be sure in what way its mandate would be carried out.

At the very least, the Exon-Florio amendment represented a significant extension of the investment-blocking power of the federal government. Policymakers inclined to restrict IFDI could do so through a broad or creative interpretation of national security. Furthermore, given the discretionary way the blocking power could be exercised, the law made it easier to demand changes in the condition of investment before granting acceptance. The law, in effect, created a *de facto* screening mechanism that could impose performance requirements on IFDI.

CFIUS remade. By Executive Order 12661, President Reagan assigned the investment reviewing authority delegated to him by Congress under the Exon-Florio amendment to CFIUS. This new responsibility of implementing the provisions of the amendment gave the interagency panel the power to take regulatory action for the first time: CFIUS's mission changed from one of monitoring to one of policy enforcement. However, given the continuing policy and political differences between the President and Congress, battles were still to be waged over how exactly the mandate of the new law was to be carried out.

To begin with, just as the Ford administration created CFIUS in part to protect presidential leadership in the implementation of IFDI policy, the Reagan administration's assignment of the mandate of the Exon-Florio amendment to the CFIUS was driven by the desire to protect executive authority. From the President's perspective, CFIUS, an interagency committee with no permanent staff or budget of its own and no line responsibility, was the preferable bureaucratic entity to which to assign the mandate of the amendment.[81] Its institutional limitations were consistent with more White House control.

The desire to retain firm presidential control over IFDI policy was obvious from the moment the White House ordered the expansion of CFIUS from six to eight member agencies. The expansion followed immediately upon the heels of presidential authorization for the committee to handle all tasks necessary to implement the provisions of the Exon-Florio amendment. The treasury secretary was retained as its nominal chair, but the membership was enlarged to include representatives of the

80. Section 721 of the *Defense Production Act of 1950, U.S. Code,* Vol. 28 Sec. 2061ff. Appendix ss 2061, as amended by Section 5021 of the *Omnibus Trade and Competitiveness Act of 1988,* Public Law 100–102 Stat. 1107.

81. Telephone interview with a senior aide to Presidents Reagan and Bush, December 1992.

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Justice Department and the Office of Management and Budget (OMB). The Justice Department's presence served policy: an antitrust element would now be added to CFIUS investigations. However, OMB's inclusion served politics, consistent with the logic of structural choice: it was added to strengthen presidential control over the committee.

Nonetheless, the White House attempt to keep a tight reign on CFIUS could not reduce the committee to a "paper tiger" nor make it invulnerable to extra-administration influences. Features of the empowering legislation as well as the working procedure of CFIUS made the committee surprisingly effective as a screening mechanism and susceptible to pressures from Congress. While it was too costly for those dissatisfied with the White House's implementation of the Exon-Florio mandate to rewrite the law, policymakers in Congress were able to exploit the interpretive leeway in the law and the operating rules of CFIUS through their oversight responsibility.

Although the White House procedure left the decision to notify CFIUS of any particular transaction to the parties involved and CFIUS member agencies, in practice other parties—including Congress—could call the transaction to the committee's attention. Such a possibility clearly limited the freedom both of the parties involved and of the administration. If the parties to a transaction that might be deemed subject to review under the Exon-Florio amendment failed to notify CFIUS, and if the transaction then escaped review, CFIUS—on its own initiative or pressured by Congress—could review the transaction at virtually any time it chose. If CFIUS then recommended action to which the President agreed, divestment could be forced retroactively—a costly consequence for any investor. Obviously, the parties had a strong incentive to notify CFIUS voluntarily, taking into account possible congressional reaction to the contemplated transaction.

Furthermore, under the Exon-Florio mandate, CFIUS could investigate IFDI in almost all industries, since no specific rules or tests governed what products, services, or technologies the law deemed critical for national security. Hence, no activity or industry was excluded from CFIUS's purview. This allowed Congress to exert pressure on CFIUS to initiate investigations, as Congress might define national security more broadly than the sitting administration.

CFIUS in action. Indeed, with the strengthening of CFIUS, the United States acquired a de facto screening mechanism that not only can bar but also has the power to set performance requirements on IFDI without resorting to governmental emergency powers. As mentioned above, CFIUS routinely receives notifications of foreign investment in companies that have cutting-edge technology or products, even if they have no defense contracts. Furthermore, CFIUS has on a number of occasions, without taking any "official" action, changed the terms of investment. In fact, the very first CFIUS investigation under the Exon-Florio amendment resulted in such an outcome.

In late 1988, CFIUS investigated the proposed acquisition of the silicon wafer division of the Monsanto Company by Huels A.G., a subsidiary of the German firm

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VEBA A.G. The division, Monsanto Electronic Materials Co., was the last remaining U.S. producer of silicon wafers for the commercial semiconductor market.[82] In this transaction, CFIUS made certain that Sematech, the U.S. semiconductor research and development consortium, would have ready access to Monsanto's silicon products. Though these products had no direct military or national security-related applications, CFIUS persuaded Huels officials to provide written assurances that the silicon wafers would continue to be produced in the United States. It also made Huels pledge that the acquired division's research and development would be conducted in the United States, its technology would not be transferred for five years, and that silicon wafers would be made accessible to the U.S. semiconductor industry.[83]

The strengthened CFIUS also has served as a kind of "trip-wire" mechanism that allowed Congress to bring its powers directly to bear on a particular transaction. Even when CFIUS appeared reluctant to act on some proposal, the mechanism provided an entry point for congressional intervention in the executive branch's handling of IFDI policy. Such interventions sometimes have undermined a "done deal."

One case involved the agreement by Fanuc Ltd., a Japanese machine tool manufacturer, to acquire a minority equity stake in Moore Special Tool Company of Connecticut, a maker of precision machine tools used in the manufacture of watches, cameras, and other precision items. Given the high-technology nature of Moore's products, the transaction triggered a CFIUS investigation in October 1990.[84]

After much internal debate within the executive branch, the White House was leaning toward letting the deal go through. However, many in Congress were unwilling to let another U.S. high-technology company fall into the Japanese orbit. Exercising Congress's *ex post* power to judge the use of delegated power, the sponsors of the Exon-Florio amendment in the House Energy and Commerce Committee scheduled a special hearing on the Fanuc-Moore transaction.[85] When a congressional challenge to the transaction became apparent, Fanuc withdrew its offer. In its decision to drop the deal, the Japanese company cited "[the] review procedure's indefinite duration and burdensome nature to all concerned."[86]

Another example of such an intervention is the autumn 1991 Senate call for an Exon-Florio investigation of the proposed sale of a 40 percent interest in the commercial aircraft division of the McDonnell Douglas Corporation to the Taiwan Aerospace Corporation.[87] When the executive branch showed its reluctance to interfere in this transaction, thirty senators, fearing that the deal would cause the

82. Spencer 1991, 15.
83. Tolchin and Tolchin 1992, 53–54.
84. Eduardo Lachica, "Foreign Stakes in U.S. Technology are Under Review," *Wall Street Journal,* 11 October 1990.
85. Ibid.
86. Clyde H. Farnsworth, "Japanese Drop a U.S. Investment," *New York Times,* 19 February 1991.
87. See Stuart Auerbach and Steven Pearlstein, "Aerospace Giant Goes to Taiwan for Edge," *Washington Post,* 16 November 1991; and Richard W. Stevenson, "Gain for McDonnell Douglas Raises Fears of U.S. Loss," *New York Times,* 21 November 1991.

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transfer of a tremendous amount of civilian aerospace technology to Taiwan, signed a letter to the President and introduced a resolution demanding government intervention. These congressional actions introduced a high level of uncertainty that contributed to the ultimate unraveling of the deal and broadcast a loud warning to those contemplating similar transactions.

Indeed, these congressional interventions, legitimized and made easier by the passage of the Exon-Florio amendment, caused the executive branch to interpret national security more broadly, by incorporating economic security concerns, and to take a much more activist approach toward regulating IFDI than it would otherwise have done on its own. The White House could not prevent Congress from carrying out its oversight function; nor could it ignore congressional displeasure, given that power to write law resides with Congress, which might further strengthen the IFDI regulatory regime. In fact, given the presence of strong partisan conflict during this period between the Republican White House and the Democratic Congress, the majority party in Congress had strong incentives to constrain the President's use of delegated authority in the foreign economic policy arena, forcing the President to accommodate congressional wishes.[88] Hence, while the President wished to prevent or minimize the "policy erosion" that might result from congressional grandstanding, he needed to forestall more serious efforts by Congress to pass restrictive laws that would more tightly bind his hands.

Thus, though policymakers continued to clash over the procedural and definitional issues surrounding CFIUS, they had reached a new policy equilibrium. The Exon-Florio amendment institutionalized this equilibrium, as it held in check greater IFDI regulation. The strengthened CFIUS represented the point at which the renewed policy struggle ended just as the flow of IFDI began to ebb.

Conclusion

While the global environment undoubtedly affects foreign economic policy, it is the domestic political processes and the actions of the national leaders that give specific shape to the national policy responses to these changes. The analysis offered here placed a special burden on the analytical assumption that it is the elected policymakers who make the critical foreign economic policy choices in advanced industrial democracies. These politicians, as those who hold ultimate political power in a democratic polity, determine the amount and types of discretion granted to foreign economic affairs bureaucracies in a manner consistent with their respective political calculations and anticipated problems of overseeing delegated powers.

Indeed, policy entrepreneurship—politicians' attempt to extract political advantage out of diffuse interests—played a critical role in changing the character of postwar U.S. IFDI policy from that of benign neglect to one of cautious activism. It

88. For more on the impact of divided government on U.S. trade policy, see Lohmann and O'Halloran 1994.

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was the elected policymakers in Congress who took the initiative in charting the new course for policy and, with grudging cooperation from the President, patched together the present regulatory framework centered around CFIUS. This is not to argue that Congress was more determined than the White House to restrict the inflow of FDI. Many in Congress realized that foreign investments often create jobs in their districts and that restrictive policy was a two-edged sword (note the failure of the Bryant amendment). However, to the extent that regulating investments that appear to threaten the security and economic competitiveness of the country promised some electoral advantage, they were eager to grandstand and delegate new authority to the executive branch. Of course, the President—as the only nationally elected policymaker and as the official responsible for the administration of government—was careful not to allow proposals endangering presidential authority and the overall openness of the U.S. IFDI policy to become law.

While the more radical policy measures proposed by some in Congress never passed into law, these proposals served to prod the reluctant White House into pursuing more aggressive policy actions that it otherwise might not have pursued. Without having to expend a great amount of political capital, congressional policymakers also gained some useful publicity. Further, by accepting incremental institutional changes—the creation of CFIUS in the first place and, later, the strengthening of its powers—policy activists in Congress were able to obtain cooperation from the White House in achieving many of their goals without engaging the President and others opposed to their stated policy objectives in more costly substantive policy battles.

The policy changes that resulted were, then, the products of institutionally mediated conflict between the President and policy entrepreneurs in Congress. The problem with other analytical approaches discussed above is not that they are wrong or unable to explain the policy shift on their own terms but that they miss an important and interesting aspect of foreign economic policymaking process. The open polity approach, an approach that pays particular attention to material incentives, tends to ignore the political motives behind policy entrepreneurship that transcend the demands of interest group politics, as described in this study. The international system approach, an approach that emphasizes state bureaucracies, does not fully appreciate the political origin of these institutions and underestimates the complexity of their function.

The conclusion offered here, then, is not that the structural choice approach should replace the more established approaches, but that, when analyzing the foreign economic policymaking process of advanced industrial democracies, the analyst should be aware that the choice and design of institutions is a political one and has a powerful impact on policy outcomes. Fortunately, more and more analysts are incorporating into their research knowledge about institutional change within some broader conception of politics.[89] While I do not wish to overstate my findings, I believe that the present study takes a stride in this direction by bringing the insights

89. See for example, O'Halloran 1994. For an example of comparative effort, see Cowhey 1993.

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of new institutionalism to the analysis of U.S. IFDI policy. While these insights do not make for easier, more elegant analysis, they do further our understanding of politics; and we need to take institutions and the political incentives that operate through these institutions seriously.

As for the future direction of U.S. IFDI policy, although the depressed volume of FDI coming into the United States in recent years has greatly diminished the political interest in IFDI policy, the fact is that even the staunchest defenders of the postwar liberal internationalism have become sensitive to the reality that globalization is producing much anxiety about the future among the U.S. voters. Given this political reality, the renewal of policy activism toward IFDI as part and parcel of the politics of economic security is not difficult to imagine. As IFDI volume increases (as it surely will as the Japanese and European economies recover and new investors from other growth regions of the world join the renewed acquisition drive), so will this activism.

In many ways, today, the world seems to be rushing toward a borderless global economy marked by "stateless" multinational corporations, round-the-clock electronic financial markets, and hundreds of billions of dollars worth of investments crossing international borders. However, those who believe that the world economy is moving toward a new age unencumbered by any form of political boundary should keep in mind that if the fear of various threats posed by IFDI is indeed groundless, then politicians will be one of the last groups with solely national constituents. The populist impulse to regulate IFDI, in the United States as well as elsewhere, will be around for some time to come.

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