

3 Unbounded Intervention

The State and the Blocked Deal

Introduction

States may employ a variety of balancing strategies in response to a perceived threat to their relative position of power within the international system. This book argues that when the perceived threat to power is caused by the potential foreign takeover of a company in one of its national security industries, a state is likely to react using one of three non-military internal balancing strategies: *unbounded*, *bounded*, or *internal* intervention. The next four chapters provide a deeper explanation and examination of each of these forms of balancing, and qualitatively assess the theory through a series of cases studies.

The purpose of this chapter is to further specify the conditions under which a state might choose to engage in unbounded intervention. Toward this end, four critical cases are examined: (1) the rumored attempt of the US company PepsiCo to acquire the French food company Danone, (2) the attempted takeover of the US oil company Unocal by the Chinese company CNOOC, (3) the attempted takeover of the US software company Sourcefire by the Israeli company Check Point, and (4) the attempted takeover of the Chinese telecommunications company PCCW by Australia's Macquarie Group (Figure 26).

As with other forms of balancing, states face costs for both over- and underreactions to these potential changes in relative power,¹ even though they may not be fully cognizant that their proactive use of these tools could be categorized as "balancing." The next chapter will therefore focus on an instance of unbounded balancing by the US, which could also be considered an instance of "overbalancing," and thus an "outlier" case: namely, the US intervention into the takeover of P&O in Britain by DPW of the UAE (Figure 26).

Figure 26 Unbounded intervention: critical cases examined in Chapters 3 and 4

	Case 1	Case 2	Case 3	Case 4	Case 5
Acquirer Name	PepsiCo	CNOOC	Check Point Software	Macquarie	Dubai Ports World*
Acquirer Country	USA	China**	Israel	Australia	UAE
Target Name	Groupe Danone	Unocal Corporation	Sourcefire Inc.	PCCW	P&O
Target Country	France	USA	USA	China**	UK
Target Industry	Food & Beverage	Oil & Gas Producers	Software	Fixed Line Telecom	Marine Infrastructure
Deal Type	Acquisition	Acquisition	Acquisition	Acquisition	Acquisition
Deal Value (in \$US thousands)	N/A	18,209,400	225,000	7,300,000	5,701,062 (Bid 1) 6,780,131 (Bid 2)
Deal Status	Rumor/ Informally Withdrawn	Withdrawn	Withdrawn	Rumor/ Informally Withdrawn	Bid 1 – Withdrawn Bid 2 – Completed
First Deal Date	February 12, 2004	March 3, 2005	October 7, 2005	June 20, 2006	October 31, 2005

* The acquisition vehicle used for this deal was named Thunder FZE.

** The company is headquartered in Hong Kong.

Defining Unbounded Intervention

Definition

The term “unbounded intervention” is used here to represent the most aggressive form of government interference into a cross-border merger or acquisition. Such intervention is defined by the *intention of government actors who, on the whole, seek to prevent a potential foreign takeover bid from reaching a successful conclusion*. Yet, government actors do not always act coherently, and on rare occasions the government itself may even be divided as to the best course of action. When trying to identify cases of unbounded intervention, therefore, it will be necessary to demonstrate that either a critical mass of government actors² seek to block the bid, or that crucial government players – i.e., those with veto power, or particular sway in the decision making process – wish to do so. In such cases, the opposition is often unable to prevent the unbounded intervention strategy from being carried out. In fact, the results from the secondary

hypothesis indicate that intervention type and deal outcome are closely linked, and unbounded intervention strategies will usually result in the successful prevention of a foreign takeover.

Purpose and Motivation

The stated purpose of unbounded intervention will almost always be the protection of national security. Indeed, the right of states to intervene is based on the protection of companies whose loss or foreign control would pose an *immediate* threat to national security. It is important to note, though, that actors involved in this type of intervention may stretch the notion of “national security” beyond its traditionally defined bounds (see Introduction and Chapter 1). This is because government actors concerned with the relative power position of their state may have longer time horizons with respect to what they consider to be a “threat.” They may also have more elastic definitions as to which companies should be placed under the rubric of the national security umbrella, especially if those companies are national champions considered vital to the state’s economic power.

The first hypothesis tested here claims that government intervention into foreign takeovers is primarily motivated by either geopolitical concerns or economic nationalism. As the findings in Chapter 2 indicate, it should be expected that the respective prominence of each of these factors will vary in accordance with the systemic relationship between states *A* and *B*. In other words, the case studies should support the general idea that when states *A* and *B* are members of the same security community, economic nationalism will usually be the primary motivation behind unbounded intervention. Similarly, when states *A* and *B* are not members of the same security community, the case studies should show that geopolitical concerns play a greater role in unbounded intervention. In either situation, however, it is expected that state *A* is concerned with its power position relative to state *B*, and thus seeks to balance the potential increase in state *B*’s relative power that could result from a particular foreign takeover by preventing that transaction from occurring in the first place.

It is also important to recognize two other possible reasons that state *A* might employ a strategy of unbounded intervention, reasons that will be controlled for in the case studies. These are: the presence of interest groups who desire a negative deal outcome, and the presence of competition concerns on the part of a relevant economic authority. It is necessary to note, however, that while interest groups may raise alarms about a deal that could affect national security, it is expected that they will rarely affect the outcome of that deal, or the strategy with

which state *A* chooses to handle it. It is also important to realize that in some cases a state may raise economic competition concerns at the same time that it flags national security issues, or that a relevant government agency may seek to veto a deal solely on competition grounds.

Means and Manner

Unbounded intervention involves the efforts of government actors to block a foreign takeover through formal, or “effective,” means. A “formal block” is when a government, or a representative government agency, officially vetoes the deal on national security grounds. An “effective block” is when the acquiring company is convinced or pressured to withdraw/rescind its proposed bid for the target company through one of the following means:

1. The government and/or its agencies voice such significant concerns or reservations regarding the deal before the formal review process begins in the relevant regulatory agencies of state *A* that the acquiring company feels compelled to withdraw the bid in the face of overwhelming opposition, which it deems too costly to overcome.
2. The government forces the divestiture of facilities or subsidiaries involved in the transaction that reside in its country. This particular strategy may also be used by a third-party state involved in the transaction to block the sale of assets within its territory.
3. The government of state *A* institutes a lengthy review process in a relevant regulatory body from which the acquiring company does not believe its bid will successfully emerge. The company’s cause for concern will likely be either that the review process has extended in time to a point where it is proving too costly for the company to proceed³ or that the government of state *A* has indicated to the company that it is unlikely to emerge from the review process without triggering a formal veto.⁴

While it is possible that efforts to “effectively” block a specified transaction may not initially succeed, this is rare (for reasons outlined earlier and later), and a state can still decide to formally veto the deal in order to prevent it from being completed. In cases where the companies involved fail to notify the relevant national authorities before a transaction is completed, many countries also maintain the right to review a takeover after completion and to unwind it, in whole or in part, if it is deemed to pose a threat to national security.

Outcomes and Results

Unbounded intervention will usually lead the acquiring company to withdraw its bid, whether or not it has been formally announced. There

are a couple of reasons behind this. First, even if there is a chance that state *A*'s position on the bid might be reversed, a company facing extreme government opposition will usually not have the time, money, or patience to surmount it. Second, a company is unlikely to desire any further negative publicity of the type that can result from such government opposition. Third, a company whose bid has been formally vetoed on national security grounds is often then branded as a "security risk" in future deals. Companies faced with severe government opposition will thus often withdraw from the bidding process before a formal veto can occur. Finally, if state *A*'s unbounded intervention strategy *does* result in a formal veto, it may not be possible for the company to reverse that decision through any means.⁵

Of even greater interest than the immediate deal outcome, however, is the impact that unbounded intervention is likely to have on the relationship between states *A* and *B*. At best, such intervention is viewed as a legitimate action by a state to protect a company from foreign control because of an immediate national security concern: an action considered a right of states, and which many states view as "fair play" even in the context of a free-market environment. Indeed, the relationship between the states involved usually remains largely unchanged, because such intervention is usually soon forgotten by states for the simple reason that M&A is associated with the private, rather than the public, realm. At worst, intervention may irritate another state into tit-for-tat behavior, causing it to respond similarly in the future.

State intervention into foreign takeovers may thus be considered a form of *non-military* internal balancing because, in addition to using non-military means, it rarely causes a *complete* disruption in the relationship between states *A* and *B*. Of all the forms of intervention discussed here, however, unbounded intervention is undoubtedly the most complete. Thus, if it is used improperly, i.e., if it becomes an instance of unnecessary balancing or overbalancing, it is the type of intervention most likely to produce a *temporary* antagonism between states *A* and *B*. Yet, even in such a case, as the DPW study in Chapter 4 shows, the internal and non-military nature of this strategy makes it unlikely to lead to a permanent disruption in the relationship between the states involved, such as the cutting of military or diplomatic ties.

Case Selection

The ten cases examined in this and the next three chapters are critical to understanding government intervention into cross-border M&A, as they have informed the way market analysts understand domestic barriers

to foreign takeovers. These cases also represent a diverse population of states associated with both the target and the acquiring companies,⁶ and each had a significant impact on the international merger market. A brief overview of why each of the cases included in this chapter is considered critical to our understanding of unbounded intervention as a form of non-military internal balancing is provided below.

The PepsiCo/Danone case is key to our knowledge of unbounded intervention, for two reasons. First, it is one of the rare instances in which unbounded intervention has occurred within the security community context, and can thus help us to understand how and why this might occur. As discussed in Chapter 5, bounded intervention tends to be viewed as a more satisfactory and useful tool of non-military internal balancing between closely allied states. It should be remembered that the database exhibited only eleven cases of unbounded intervention out of 158 cases of intervention within security communities as a whole. In almost every case, economic nationalism was the primary, and geopolitical competition the secondary, motivation for unbounded intervention.⁷

Second, though PepsiCo/Danone is clearly a case of unbounded intervention in terms of motivation and form, it has one unique feature that prevented its inclusion in the statistical database, and which makes it critical to examine qualitatively if we are to further our understanding of such balancing. For, though it is one of the more often cited examples of government intervention into foreign takeovers, the target company (Danone) hails from an industry that many states would not normally associate with “national security:” the yogurt industry. Food and agriculture were not included in the sectors covered in the statistical database, because there is little consensus over whether or not it should be considered a national security sector. Some countries do consider the agriculture and food sector to be critical infrastructure, and since the Danone case there have been several reviews of foreign investments into the takeovers of large agribusinesses for possible national security risks, though thus far no notable vetoes have been recorded in this sector on such grounds.⁸ It was important to examine this case, however, because the French government adamantly argued that Danone’s safety from foreign acquisition was a matter of national security, and promptly changed French FDI law to reflect its concerns. This case thus provides an excellent opportunity to examine the dynamics that result when such an unusual categorization is made.

Conversely, CNOOC/Unocal is a critically important instance of unbounded intervention *outside* of the security community context. This case provides a detailed example of a company, owned by the

government of a rising power that has a stated policy of using M&A to gain control of vital resources, finding its attempted acquisition blocked primarily because the target company's state feared the geopolitical and national security implications of such a deal. It is also of interest because of its historical context, as unbounded intervention occurred with relative infrequency in the US before this case. The US had not previously sought to block British Petroleum's (BP's) purchase of Amoco in 1988 or Petróleos de Venezuela's (PDVSA's) purchase of CITGO in 1990, both of which were arguably of much greater economic importance. Thus, it is vital to understand why unbounded intervention was considered warranted in this particular instance.

The Check Point/Sourcefire case was included because it is a rare example of unbounded intervention within a security community that was primarily motivated by national security and geopolitical concerns, rather than by economic nationalism. Despite the extremely close relationship of the US and Israel (the countries involved), tensions existed over Israel's ability and willingness to adhere to US export control laws for technology in the sector in question.⁹

Finally, the Macquarie/PCCW case has been included as an example of unbounded intervention outside of the security community context, and is considered critical because it widens the geographical test of the hypotheses. In this case, the target company is Chinese, and the acquirer Australian. Certainly, it is the only example within the database of unbounded intervention being undertaken by either Russia or China within the time frame examined. This is primarily because these are what might be termed "capitalist autocracies," where the foreign acquisition of 100% of a company within the industries examined here is highly regulated and, if it is allowed at all, must often be undertaken with the cooperation of the government. Such strict regulations regarding this type of foreign investment mean that unbounded interventions are rarely necessary in these countries, because if the government doesn't indicate in advance that it wants a deal to happen in some form, companies are usually unwilling to risk the capital to pursue it. Indeed, the high degree of regulation within many industries in China and Russia already indicates a tendency toward internal balancing used to strengthen their strategic sectors relative to those of other states. The number of foreign acquisitions in these countries is also generally lower than in the EU or US, due to the uncertainties of their investment climate. It is still possible, however, for a foreign company to attempt a takeover in these "strategic industries," and it is important to understand how these governments will react, and what will motivate them.

Case 1: PepsiCo/Danone*The Story*

On July 6, 2005, a rumor surfaced in the international equities market that the US beverage company PepsiCo was in the process of formulating a bid to acquire 100% of the French yogurt and water company Groupe Danone.¹⁰ Talk of the rumor persisted throughout the summer despite Danone's insistence that they had not been approached regarding a possible takeover (Perri & Deen 2005), largely because of Pepsi's refusal to comment on the rumor either positively or negatively (Matthews 2005; Mercer 2005). International newspapers and wires kept the story going, naming inside sources who believed that the bid was real, or who claimed to know which banks were helping Pepsi to prepare its offer (see e.g., Brothers & Robbins 2005; Gay 2005; Schuman 2005). Meanwhile, "the French media reported rumors that [the takeover] was imminent – and even, wrongly, that the American group had already bought a 3% stake" (Gow 2005).

What followed was an almost immediate reaction on the part of the French government, which sought (with gusto) to prevent the takeover entirely. By July 19, a lower-level government official made the "concern" of the French government over such a "culturally awkward" deal known to the press (Zephyr 2005a). In the next two days, the French Prime Minister Dominique de Villepin publicly proclaimed Danone's status as a national champion, naming it one of the "jewels of [French] industry" (de Beaupuy & Vandore 2005) and claiming that the French government would protect its independent French status in order to "defend France's interests" (Vandore 2005a). At the same time, French President Jacques Chirac announced his concern over the possible deal, stating that the French government was "particularly vigilant and mobilized" to intervene if necessary, and stressing the role of the government in maintaining "the industrial competitiveness and . . . strength of its companies" (de Beaupuy & Vandore 2005).

It was not until July 25 that PepsiCo reported to the French market regulatory body (the Autorité des Marchés Financiers, or AMF) that it was not preparing a takeover bid for Danone "right now" (Perri & Deen 2005). This "denial" of the rumor, however, still clearly left open the possibility that Pepsi might make such a bid in the future. The result was that less than twenty days after the initial rumor surfaced, and without any formal bid having been announced by Pepsi, the French government signaled its intent to prevent a hostile foreign takeover of Danone through a series of actions that formed a coherent strategy of unbounded intervention.

First, the AMF became involved toward the end of the month by announcing that it would begin an investigation into the trading of Groupe Danone's shares (Vandore 2005b). This was because Danone's share prices had been fluctuating greatly, rising on reports of a takeover, and then falling sharply on July 25, when Pepsi denied an imminent bid (Gow 2005). The investigation was made at the behest of "the minority shareholders' defense group, ADAM," which "demanded a full-scale investigation to determine whether the rumors about Danone were the result of market manipulation and insider trading" (Gow 2005). The AMF echoed the widespread frustration that Pepsi's failure to clearly refute the rumor had a great effect on share price (AMF 2005). This investigation eventually had a great impact on FDI in France, as it prompted the so-called "Danone Amendment" to be passed into law in March 2006 (see Merger Market 2006). The new law "ultimately . . . aims to deter takeover bids that are either hostile or motivated by speculation, by [allowing the target company to] increase[e it]s capital through the issuing of stock purchase warrants" (EIRO 2006). Ironically, this amendment was attached to a law meant to provide for the domestic implementation of the European Takeover Directive, one of the goals of which was to reduce barriers to cross-border M&A within the EU (see European Parliament 2004).

Second, and more importantly, Chirac and Villepin announced in a government meeting on July 27, 2005 that France "must strengthen the measures to protect [its] key companies," and suggested that French law would need to be changed in order to protect its companies from such "hostile"¹¹ foreign takeovers (Vandore 2005b). Less than a year earlier, on December 9, 2004, the French National Assembly had already passed a "Reform Law" intended "to ensure that all foreign investments involving public order, public security, or interests of national defense were subject to official review" by the French government (Cafritz 2014, 1).¹² By August 31, 2005, amidst the PepsiCo/Danone rumors, French Finance Minister Thierry Breton announced that eleven "sensitive" sectors would be considered strategic and, therefore, that the government would be changing the law to protect companies in these industries from unwanted foreign takeovers in the future (de Beaupuy 2005). On December 31, 2005, the French government put this plan into action, passing an *anti-takeover decree* that gives it "the right to veto or impose conditions on foreign takeovers of domestic companies operating in as many as 11 sensitive industries" (Buck et al. 2006b). These include the industries dealing with:

private security, if used, for example in nuclear or other secure installations;
research or production of products that can be used in terrorist or chemical

attacks; bugging equipment; information security; companies providing information technology security to government; dual-use technology for civilian or military applications; cryptology; companies entrusted with defense secrets; arms; certain sub-contractors to the defense ministry; and casinos, where the government is concerned about money laundering. (Buck et al. 2006b)

The French government notably broadened the scope of its strategic sectors list again in 2014, to help ensure government approval would be needed before the US company General Electric could acquire the French conglomerate Alstom,¹³ adding industries related to the “security and continuity of supplies that are essential to public order or safety and national defence,” such as water, energy, transport, and health (Hepher 2014).¹⁴

Both the French President and Prime Minister were strongly in favor of the 2005 anti-takeover decree as a result of their opposition to a possible bid for Danone by Pepsi, and, consequently, they used every opportunity to show their support for it during the furor caused by the rumor. They went out of their way to publicize their intent to “defend French interests” in a potential bid for Danone, and Villepin openly contended that France “must ensure that [its] companies have the same means to act and defend themselves as their foreign counterparts” (Vandore 2005b).

Thus, it is clear that even though the acquisition of Danone by Pepsi had not yet passed the rumor stage, the French government reacted to the potential bid with a virulent campaign to prevent its success. Furthermore, the French government sought, successfully, to carry out a strategy of unbounded intervention to block this potential cross-border takeover bid on the basis that it threatened the national interest and security. The question, therefore, is not only why did the French pursue this type of intervention, but also why did they pursue it in the context of the yogurt industry, which is not one that would normally be associated with “national security” in the traditional sense. The variables proposed in the primary hypothesis are explored in relation to the PepsiCo/Danone case in the sections that follow, together with an analysis of which variables provided the primary motivation behind the French government’s actions.

Geopolitical Competition

Resource Dependency

While France is a resource-dependent nation, the US is not one of its primary sources of energy (see Encyclopedia of Earth 2007). France’s resource dependency ratio, or the ratio of all its imported energy sources

to its total energy supply, was 63% in 2005.¹⁵ This is very close to the mean resource dependency ratio for the 209 cases in the dataset, which was 62%.

Relative Power Differential

Despite the fact that both the US and France are major powers, the relative power differential between them is vast. The US completely overshadows France in terms of relative military power. In 2005, US military expenditure was \$504,638 million, which was over nine and a half times France's expenditure of \$52,917 million.¹⁶ Furthermore, this differential was increasing because the average growth rate of the US' military expenditure between 2001 and 2005 was 8%, while that of France was only 1%.¹⁷ The differences are also stark in terms of relative economic power. US GDP in 2005 (at price purchasing parity, or PPP) was almost seven times that of France.¹⁸ The relative economic power of the US was also increasing slightly vis-à-vis France at this time, with the average economic growth rate for the years 2001–05 being 5% for the US and 4% for France.¹⁹ It is clear, however, that France was closer to the US in terms of relative economic power than it was in terms of relative military power. It would thus make sense at the time for the French government to seek to balance the US through means that would help enhance France's relative economic power position.

Overall Character of the Geopolitical Relationship

The US and France are formal military allies and members of a deeply integrated security community, a relationship formalized through their membership in NATO. At the heart of this alliance is Article 5 of the Treaty, which provides for the mutual self-defense of its members, who commit to treat "an armed attack against one or more of them" as "an attack against them all" (NATO 1949). Despite the end of the Cold War that originally gave it purpose, NATO's members have maintained the alliance and committed to strengthen it, and to redefine its mission. NATO remains the "essential alliance" for the US (Burns 2004), and France recognizes it as "a priceless asset that must be maintained in order to cope with current and future challenges and threats" (French Ministry 2008).

This being said, the relationship between the US and France within NATO is far from uncomplicated. France left the military arm of NATO in 1966 in order to pursue its own independent nuclear and military defense plans, largely because of disagreements with US policy and concerns that the US would not provide fully for the defense of France in case of a nuclear war (La Fondation Charles de Gaulle 2008). Since

that time, France has contributed troops to Alliance operations such as Kosovo and Afghanistan, even when it was not officially part of NATO's military command. Chirac initiated a discussion to rejoin the NATO command early in his presidency, but his demands for rejoining were not met, and the discussion was dropped almost ten years before the 2005 PepsiCo/Danone case. In 2007, French President Nicolas Sarkozy made overtures to rejoin the military command of NATO, but France did not officially do so until April 2009, well after this case concluded.²⁰

Strain within the US–French alliance arguably reached a height, however, following the invasion of Iraq in 2003. French opposition to the Iraq war was vociferous and unflagging, with threats of a French veto in the UN preventing the US from gaining full Security Council authorization for the invasion, and the acrimony of the discussion causing many to question the future of the alliance. This strain had not faded by the time of the PepsiCo/Danone case, and it was only with the later election of President Sarkozy that tensions began to ease.

As a result, there was a prevailing perception within France at the time that the US was a threat to international stability, not only because of its unilateral foreign policies, but, more fundamentally, because of its position as the world's only superpower. Though French public opinion of the US has been relatively low for some time, the Pew Global Attitudes Project (PGAP) found that it lowered dramatically after the Iraq War, falling from 63% in the summer of 2002 to 43% in June 2003 (Pew Global Attitudes Project 2003). Moreover, the French government has not been shy over its concerns with US *hyperpuissance*, a concept first put forward by then French Foreign Minister Hubert Vedrine in 1999 (Lieber 2005). The French strongly believe in “the need to counterbalance [US] power,” and have “expressed under Chirac’s presidency” the belief that “multipolarism is a better way to guarantee world security than unipolarism” (Tardy 2003). They feel that unipolar power is dangerous because of its ability to act beyond the constraint of international norms and agreements. The French have thus tried to establish themselves as the leaders of a self-styled effort to balance US *hyperpuissance* and return the world to multipolarity.

Within the confines of the NATO relationship, then, the potential exists for a certain level of strategic competition between the US and France. This competition largely focuses on the use of diplomatic and economic tools to balance US power. Within this context, it is not surprising that the French government might use a tool of unbounded intervention to prevent the takeover of one of its national champions by a US company. The use of such a non-military internal balancing strategy

makes perfect sense within the context of France's desire to enhance its own power vis-à-vis the US, while at the same time maintaining an alliance with the US, which it believes provides more strategic benefits than costs.

Thus, while French and American security are formally intertwined, their relationship remains antagonistic because of the vast power differentials and historical differences between the two countries, which are resented by the French, and which were exacerbated by the US' unilateralist approach to Iraq. The French have a stated policy of seeking to balance US power, and, not surprisingly, chose to do so through unbounded intervention in the PepsiCo/Danone case. This can be interpreted as the French government protecting its relative economic power position vis-à-vis the US by defending one of its national champions (Danone) from a US "predator" (Pepsi).

The timing of the anti-takeover decree, and the acknowledgment that this case was the impetus behind the law, helped frame the protection of Danone as a matter of French national security. Chirac and other members of the French government painted Danone as a "key" company, "national treasure," and "jewel" of French industry, whose protection was of paramount importance not only to French "industrial competitiveness," but also to its "interests" (see Brothers & Robbins 2005; Corcoran 2005; de Beaupuy & Vandore 2005; Vandore 2005b). While the food industry was not protected in the final version of the law, there was speculation that it would be included as one of the eleven strategic sectors made "off limits" to foreign takeovers. The government also did nothing to dispel the belief that Danone would be protected until after the takeover rumors died down, when a French Finance Ministry official would only say that "Yogurt does not feature on our list" (Bennhold 2006a). However, under the provisions of the law, Danone itself was protected from a foreign takeover, because it also owned a casino – an industry that was protected at the time of this case, on the grounds that the government needed to monitor casinos and gambling to protect the country from money-laundering used for organized crime and terrorism (see PINR 2005). Casinos were later removed from the list of strategic sectors in a 2012 update of the 2005 Decree, reportedly under pressure from the EU Commission, though the wider gambling sector (excluding casinos) was retained on the list of strategic sectors for which the investments of non-EU foreign investors would be subject to review (Cafritz 2014, 3, 9).²¹ France's government thus went to extraordinary lengths to ensure that a food and drinks company was associated with national security in order to effectively veto the potential transaction at the time, and to reinforce its "right" to veto such a deal in the future.²² With all

of this in mind, it remains true that the US and France are closer allies than many states in the world, and the underlying elements of geopolitical competition between them could not have been enough to cause this kind of virulent reaction on its own.

Economic Nationalism

As the birthplace of nationalism, and as one of the few true “nation-states,” France retains high levels of national pride. In the last wave of the World Values Survey before this case, 37% of respondents in France claimed to be “very proud” of their nationality, and another 47% were “quite proud,” making 84% proud of their national identity to at least some degree (WVS 2001–04).

Not surprisingly, the French are also well known for their economic nationalism. This is partially rooted in pride – 32% of French citizens claim to be proud of their nation’s economic achievements (ISSP 2003). The virulence of their economic nationalism, however, is also rooted in a strong belief that globalization threatens not only French “culture and . . . identity,” but also the health and vitality of the French economy (Gordon 2005). This belief is strengthened by the fact “that globalization directly challenges the statist economic and political traditions of the country” (Gordon 2005). For example, a 2005 World Public Opinion (WPO) survey of every G8 country but Japan asked respondents whether “the free enterprise system and free market economy [was] the best system on which to base the future of the world” (WPO 2006). France was the only country where more respondents disagreed with that statement (50%) than agreed that the free-market economy was a positive influence (36%) (WPO 2006). In a survey of fifty-four countries, French businessmen ranked second to last among those who believed that “attitudes toward globalization are generally positive in [their] economy,” followed only by Venezuela (IMD 2007a, 2007b).²³ Such intense anti-globalization sentiment infuses every aspect of business in France, and was one of the primary reasons behind the French rejection of the EU constitution in 2005. Furthermore, the French associate the evils of globalization with “Americanization” (Gordon 2005; WPO 2006), explaining in part their virulent reaction to a perceived national champion being taken over by a US company.

The French government thus blatantly refused to allow one of its recognized national champions to become a victim of globalization in the form of a takeover by an American company. One observer even went so far as to proclaim “L’état, c’est Danone” (Corcoran 2005). France has had a history of subsidizing and protecting its companies from foreign

control since the Cold War, but this case sent the government “into protectionist overdrive” (WSJ 2005a).

Villepin’s stated policy of “economic patriotism”²⁴ throws the role that economic nationalism played in French opposition to the potential Danone takeover into stark relief. Simply put, this doctrine is an “industrial Maginot line” – a policy “designed to defend ‘France and that which is French’ . . . by declaring entire sectors of French industry off-limits to [foreign takeovers]” (Theil 2005; Economist 2006b). The French government even argued that this was not “protectionism,” but a policy designed to counter similar policies “in the US and elsewhere” (Thornhill & Jones 2005). Most importantly, however, this policy of economic patriotism is considered by many to be a reaction to the rumors surrounding the possible takeover of Danone by Pepsi (see e.g., Franks 2006). Its formulation clearly demonstrates France’s desire to balance the relative economic position of the US through unbounded intervention in this case, and to balance that of other countries in future like cases.

All of these facts combine to show that economic nationalism was indeed one of the primary motivations behind France’s strategy of unbounded intervention in this case, and that this was exacerbated by tensions in the geopolitical relationship between the US and France. It is in the context of such virulent economic nationalism that the Pepsi rumor was able to trigger both legislation and the formalization of a new economic policy designed specifically to block a foreign takeover of Danone. Furthermore, these policies enjoy such strong support across government and public lines that it is unlikely they will change in the future.

Presence of Interest Groups

There were interest groups present in France that either opposed the PepsiCo/Danone deal or were likely to oppose it if given the opportunity to do so. Danone itself preferred “to remain independent,” but was also reportedly looking for a domestic white knight to provide an alternative if Pepsi did make a formal offer for its company (Perri & Deen 2005; Schuman 2005). Danone Chairmen Franck Ribaud later suggested, however, that he did not actually want to see the government “sanctuarise” his company, because “sanctuaries are for relics, whereas Danone thrives on the competition it faces in all its markets” (Dairy Reporter 2006). Thus, the actual role played by Danone in the government’s actions is somewhat opaque. Furthermore, the fact that the government reacted to the rumor almost immediately meant that shareholders (who would be

the main stakeholders in such a transaction) didn't really have time to respond either positively or negatively to the deal.

It was also fairly clear that the interest groups normally associated with anti-globalization movements would protest against the deal due to fears that it would lead to job losses for French workers, and because of the company's iconic role in French economic identity. It was, for example, claimed that "France's Unions would . . . strongly oppose a PepsiCo deal," as would French farmers (Brothers & Robbins 2005; Corcoran 2005). This did, of course, play a role in the government's attitude toward the deal, and contributed to the unlikelihood that it would become more than a rumor. These interest groups, however, were largely motivated by economic nationalism themselves, and it seems clear that it was the general economic nationalist mood of the nation at that time, rather than the persuasive powers of any one interest group, that contributed to the rapidity of the French government's intervention. In the end, it was not the opposition of a particular interest group, but the staunch opposition of the French leadership combined with widespread opposition that prevented the rumor from ever becoming a reality.²⁵

More importantly, the immediate groundswell of opposition to the deal did not come from the market, but from French government officials appalled at the notion that such a French icon would be bought by a foreign – and, equally important, an *American* – firm. As the preceding discussion of the general French tendency toward economic nationalism and the specific French policy of economic patriotism demonstrates, it is not surprising that the government in this case did not need the lobbying of a specific irate interest group or stakeholder to bring its attention to, or convince it of, the dangers of such a deal.

Competition Concerns

The issue of whether or not such a combination of companies would be monopolistic, or whether competition within the food industry would be affected negatively by such a takeover, was not a concern that was flagged by the government or the market in this case. This was largely because government efforts to block the deal on other grounds were so quick that the deal was scuttled long before it could move beyond the rumor stage.

Conclusions on PepsiCo/Danone

There is a distinct pattern of French government-led efforts to balance the relative economic power position of the US through a strategy of

unbounded intervention in this case. This makes sense in the context of French efforts to balance American *hyperpuissance* as a whole. This strategy seems to be both purposefully and consciously implemented. Not surprisingly, the stock of French FDI abroad far exceeded that of FDI into France, in terms of both book and market value, in 2005 and 2006 (US DOS 2009). For, at the same time that the French have sought to protect their national champions from foreign takeovers, they have supported their “own companies [who] are active acquirers” abroad (Parker & Thornhill 2005).

Case 2: CNOOC/Unocal

The Story

In 2005, the potential acquisition of the American Unocal Corporation by the Chinese government-owned CNOOC Ltd. caused an almost unprecedented reaction in Washington, where a widespread movement among members of the US government sought to block the foreign takeover through a strategy of unbounded intervention, allowing the American company Chevron to win the “war” for Unocal. All three companies involved were in the oil and gas industry, and Unocal was a recognized takeover target that, though relatively small as “the 9th largest oil company in the world” (Powell 2005), provided others with a unique opportunity to buy an independent company with wholly owned assets in Asia. Indeed, Unocal had relatively few assets in North America (mainly in the Gulf of Mexico) and Europe, but a number of prime assets in Asia (in Azerbaijan, Bangladesh, Indonesia, Myanmar, the Philippines, and Thailand), in addition to a number of joint venture (JV) projects in Asia (Unocal 2005; Greenwire 2005c). Meanwhile, CNOOC Ltd., an American listed company based in Hong Kong, was seeking to expand its asset base in Asia. The fit initially seemed obvious to the market,²⁶ though there were questions over whether CNOOC could afford Unocal. Yet, controversy ensued when it was realized by public policymakers that CNOOC Ltd. was 71% owned by the Chinese government-owned and controlled China National Offshore Oil Corporation.

The race for Unocal began early in 2005. CNOOC announced it was considering a bid for the company on January 7, and by March 3, Chevron had stated it too was contemplating mounting a takeover attempt. In early April, CNOOC withdrew itself from the bidding process amid the concerns of its non-executive board members, who were “troubled by the amount of debt” CNOOC would have to take on

in order to complete such a deal (Timmons 2005). With the path seemingly clear, Chevron announced on April 4 its intention to buy Unocal for \$18 billion in a debt/cash deal worth “an overall value of US \$62.00 per share” (Zephyr 2005b, 2005c), for which it received approval from the Federal Trade Commission (FTC) of the US by June 10, and from the US Securities and Exchange Commission (SEC) by July 29. The race, however, was far from over, and on June 7, CNOOC once again “confirmed” its intention to make an offer for Unocal in the near future (AFP 2005a), a promise that it fulfilled on June 22 when it topped Chevron’s bid with a *cash* offer of \$67 per share of Unocal stock (Zephyr 2005b, 2005c).

Before continuing with this story, it is necessary to remember that in the US there are three major hurdles any foreign takeover must clear in order to be successful (Grundman & Roncka 2006). The first is a Foreign Ownership, Control or Influence (FOCI) review, in which the DOD Defense Security Service (DSS) investigates a transaction to ensure that it will not “result in unauthorized access to classified information or . . . adversely affect the performance of classified contracts” (DSS 2016b). This process was established in 1993 as part of the National Industrial Security Program (NISP) created by Executive Order 12829.²⁷ Like the CFIUS process, the FOCI review is classified, and it is unclear whether Unocal had classified contracts that would have triggered a FOCI review if it had accepted CNOOC’s bid.

The second hurdle is a competition review provided for under the 1976 Hart–Scott–Rodino Antitrust Improvements Act, which occurs before a transaction is concluded. This review process, carried out by the FTC and Department of Justice (DOJ), with support from the DOD as needed, is “intended to protect competition and prevent transaction-specific adverse impacts on prices and innovation” (Grundman & Roncka 2006, 2).²⁸ As discussed later, the US government did not really display concern over a proposed CNOOC/Unocal deal on such competition grounds.

The third hurdle for foreign investors is the CFIUS process. As discussed in the Introduction, this national security review process for foreign takeovers was initially established by the Exon–Florio Provision of the 1988 Omnibus Trade and Competitiveness Act, which:

amended Section 721 of the Defense Production Act of 1950 to provide authority to the President to suspend or prohibit any foreign acquisition, merger or takeover of a US corporation that is determined to threaten the national security of the United States. The President can exercise this authority under section 721 . . . to block a foreign acquisition of a US corporation only if he finds: (1) there is credible evidence that the foreign entity

exercising control might take action that threatens national security, and (2) the provisions of law, other than the International Emergency Economic Powers Act do not provide adequate and appropriate authority to protect the national security. (US DOT 2007)

President Reagan also signed Executive Order 12661 in 1988, amending the Executive Order that originally established CFIUS (11858), and thus delegating his new presidential authority to investigate and review foreign takeovers to CFIUS. The Committee is headed by the Secretary of the Treasury, who at the time of this case was John Snow. In 1992, the “Byrd Amendment” to the 1950 DPA further stipulated that CFIUS be mandated to investigate proposed takeovers in which the acquirer was “controlled by or acting on behalf of a foreign government.”²⁹ The national security review for foreign takeovers was thus referred to for a long time as the “Exon–Florio Process,” and these provisions served as the backbone of foreign takeover law in the US until being updated by the Foreign Investment and National Security Act of 2007 (FINSAs).³⁰

FINSAs was passed in response to Congressional concerns over the strength, transparency, and oversight of the CFIUS process following the CNOOC/Unocal and DPW/P&O cases examined in this book. FINSAs and Executive Order 13456, respectively, once again amend section 721 of the DPA and Executive Order 11858. FINSAs primarily clarifies the Exon–Florio process and makes it more transparent.³¹ FINSAs also notably increases the membership of CFIUS from the twelve reporting agencies it had reached by the time of the CNOOC/Unocal case³² (adding the Secretary of Energy), and formally recognizes critical infrastructure as a national security concern in transactions covered by the review process. For the most part, however, FINSAs simply provides for a “codification of [the] many existing informal practices” (Plotkin et al. 2009) already in play during this case and the DPW/P&O deal. Concern over critical infrastructure, for example, was already informally recognized in the DPW transaction, and the inclusion of the Energy Secretary was presaged by the CNOOC case. *Thus, though FINSAs came after many of the cases examined here, it does not affect the theory, or the conclusions drawn from these case studies.*

Crucial to understanding the CNOOC/Unocal case is the CFIUS filing procedure and timeline for reviews, which has not changed since 1988. Filings with CFIUS are usually voluntary, with companies notifying the Committee once a preliminary or formal agreement has been reached for the transaction in question (US DOT 2007). When this notification is received, the review process begins; for most companies, this involves a simple thirty-day review of the transaction, but in cases

where a national security issue is flagged, the Committee can conduct an “extended 45-day review,” which must be followed by “a report . . . to the President, who must [then] announce the final decision [on the deal] within 15 days” (US DOT 2007). This means that ninety days is the maximum time allowed for a review (US DOT 2007). This time limitation is important because it gives foreign investors a time frame within which they can plan to have contingent funding and resources available for their transaction. One industry source has also pointed out that unexpected delays in the review process, especially those that might unofficially extend the ninety-day limit, can cause some foreign companies to lose short-term financing opportunities or force them to pay higher prices because of interest accrued on loans that may have already been in place for a deal. More importantly, however, and as the CNOOC/Unocal case will demonstrate, attempts to cause a delay in a foreign takeover transaction beyond the ninety-day process cause uncertainty and, therefore, a degree of risk that investors, shareholders, and board members of the companies involved are usually unwilling to accept. Understanding the details of this review process is thus integral to understanding what happened in the CNOOC/Unocal case.

The possibility of a Chinese government-owned company taking over a US oil company during a period of tense Sino-American relations and rising energy prices began to worry members of the US government, who quickly sought to deal with the issue both inside and outside the context of this highly institutionalized process for reviewing foreign takeovers under US law. By June 17, US Congressmen Duncan Hunter (R-CA) and Richard Pombo (R-CA) sent a letter to President Bush requesting that CFIUS investigate the potential ramifications of a CNOOC/Unocal deal because they were concerned that such a deal would threaten “US jobs, energy production, and energy security” (Timmons 2005). The latter issue was of significant concern to the congressmen, who “encourag[ed] Bush to consider the national security implications regarding the transfer of technology to China in the event of Unocal’s acceptance of CNOOC’s offer” (Bullock & Xiao 2005b). On June 22, only five days after the Hunter/Pombo letter, “Energy Secretary Samuel Bodman [confirmed] that a bid would be reviewed by [CFIUS]” (Gold et al. 2005). On June 23 – the same day that there was a hearing in “the Senate Finance Committee . . . on the evolving US–Chinese economic relationship”³³ – Senator Chuck Grassley (R-IA) announced that US “legislators [would] watch [the] CNOOC–Unocal” deal (Gold et al. 2005; Dow Jones 2005b). By the end of June, “41 members of Congress sent a letter to Treasury Secretary John Snow . . . asking that the potential transaction ‘be reviewed immediately to investigate the implications

of the acquisition” (Graham & Marchick 2006, 131). On June 27, Congressmen Joe Barton (R-TX) and Ralph Hall (R-TX) wrote a letter to President Bush urging him to block a CNOOC takeover of Unocal because it “poses a clear threat to the energy and national security of the United States” (Orol 2005d; Barton & Hall 2005). Congress was thus beginning to lean toward a clear strategy of *unbounded intervention*, with the intent to block the deal one way or another.

This strategy was solidified on June 30 in two separate formal actions taken by the US House of Representatives. The first was the passage of House Resolution 344, sponsored by Congressman Pombo, which formally recognized congressional concern that a CNOOC/Unocal deal “threatens to impair the national security” (US House 2005c). This concern mostly emanated from a belief that, in an environment where the US and China were competing for energy resources and Sino-American relations were strained, the Chinese government might through its ownership of CNOOC use a Unocal purchase to gain control over much-needed energy assets, as well as over dual-use technologies that could have military applications. H. Res. 344, therefore, demanded that if Unocal and CNOOC did agree to a transaction, “the President . . . [would] initiate immediately a thorough review of the proposed acquisition, merger, or takeover” (US House 2005c). This resolution passed by a vote of 398–15.

The second action taken by the US Congress was the addition of Amendment 431 to H.R. 3058.³⁴ The purpose of this amendment, sponsored by Congresswoman Carolyn Kilpatrick (D-MI) and passed by a vote of 333–92, was to “prohibit the use of [Treasury] funds from being made available to recommend approval of the sale of Unocal Corporation to CNOOC Ltd. of China” (H. Amdt. 431 to H.R. 3058). This amendment was clearly a tactic to block a CNOOC/Unocal deal, because, had CNOOC and Unocal reached an acquisition agreement, a CFIUS review would have been triggered, and those funds required. H. Res. 344 mandated that such a review be “thorough,” which would indicate a full forty-five-day CFIUS investigation, resulting in a report to the President, who would then have to give his approval or disapproval regarding the transaction (see H. Res. 344). This amendment, therefore, would have made it impossible for the President to give his approval under such a scenario, because the report would be delivered through the Chair of CFIUS, who is the Secretary of the Treasury, and who by definition would be using funds from the Treasury.

The high-profile concern generated by the deal caused the CEO of CNOOC, Fu Chengyu, to take the highly unusual step in late June of “writing to members of Congress expressing his company’s willingness to

participate in a [CFIUS] review” (International Oil Daily 2005c) and on July 1 of requesting that CFIUS review the transaction before an acquisition agreement had actually been reached with Unocal (Amaewhule 2005).³⁵ On June 30, Liu Jianchao, the spokesman for the Chinese Foreign Ministry, announced that “China wants to find a ‘win-win’ result,” because “this issue is a commercial transaction between two companies, and a normal exchange between China and the US. It should stay free of political interference” (Dow Jones 2005a). In the beginning, CNOOC really believed that the US would not block the transaction as long as it marketed the deal, and its intentions, correctly. Chengyu, for example, was truly “confident [the] deal [was] politically viable” (AFX 2005a), once he made it clear that CNOOC’s “all-cash offer [was] clearly superior for Unocal shareholders” and was “good for America,” and that CNOOC would “protect Unocal’s US jobs” (Gold et al. 2005).

Frustration on the part of the Chinese government at what it viewed as US “protectionism” soon began to show, however. In what is widely viewed as a critical slip in the campaign to win the race for Unocal, the Chinese Foreign Ministry made another statement on July 5, declaring: “We demand that the US Congress correct its mistaken ways of politicizing economic and trade issues and stop interfering in the normal commercial exchanges between enterprises of . . . [China and the US]” (Dow Jones 2005d). This statement only served to increase the fears of certain members of the US government that the Chinese government was guiding the CNOOC bid, and that such an offer did not necessarily have friendly motivations (Dow Jones 2005d).³⁶

On July 13, the same day that it was reported CNOOC was contemplating making a higher offer in order to win over Unocal shareholders (Canadian Press 2005), the difficulties for CNOOC’s bid intensified. First, CFIUS reportedly denied CNOOC’s request for “a preliminary opinion on its proposed acquisition” (AFX 2005c). Second, the House Armed Services Committee held a hearing to review the “national security implications” of a CNOOC takeover (Dow Jones 2005c). The majority of witnesses at the hearing, and most members of the committee, believed such a takeover would be a threat to US national security (AFX 2005c), and Committee Chairman Duncan Hunter argued the deal was fundamentally “at odds with US interests” (AFX 2005c). Finally, Senators Chuck Grassley and Max Baucus (D-MT) sent a letter to the President expressing their concern over the possible CNOOC takeover, supporting calls for a formal CFIUS review of the deal if an acquisition agreement was made with Unocal (Grassley 2005). On July 15, Senator Dorgan (D-ND) introduced S. 1412, a piece of legislation that would have “prohibit[ed] the merger, acquisition, or takeover of

Unocal Corporation by CNOOC Ltd. of China” outright, if it had been passed (US Senate 2005).

Despite the hot political environment, Unocal was enticed by the possibility of a bidding war for its company, as well as the higher return for its shareholders that a courtship of CNOOC promised. Unocal’s board and shareholders wanted the highest price at the lowest level of risk. Thus, on July 14, the board of Unocal “agreed that ‘assuming neither Chevron nor CNOOC improved the financial terms of [their] proposed transaction[s], the board’s inclination would be to withdraw its recommendation for the Chevron transaction’” (Natural Gas Intelligence 2005). When Chevron then raised its bid on July 19 to “an overall value of US \$63.01 per share,” Unocal’s board not surprisingly recommended this new bid to its shareholders (Zephyr 2005d).

At this point, opposition to the deal remained strong within the US government and public. The hearing held by the House Energy & Commerce Committee reviewed the possible CNOOC/Unocal Deal on July 22. Senators Vitter (R-LA), Bayh (D-IN), Talent (R-MO), Coburn (R-OK), and Inhofe (R-OK) also sent a letter on this date,

urging Senate Energy and Natural Resources Committee Chairman Pete Domenici (R-NM) and Ranking Member Jeff Bingaman (D-NM) to include language in the Energy Bill Conference Report that would require the Secretary of Energy, along with the Secretaries of Defense and Homeland Security, to study the implications of such a transaction before a formal review could begin. (States News Service 2005b)

By mid-June, 73% of Americans polled by the Wall Street Journal claimed to “‘dislike’ the potential [CNOOC] deal” (Voice of America 2005).

Throughout this period, the White House remained fairly neutral on the proposed foreign takeover, as is the norm in such cases. This was largely because it did not yet need to get involved, and likely because it probably was better to wait and see whether Unocal actually chose CNOOC over Chevron, rather than waste valuable political capital committing itself to a position at such an early stage in the process. The White House did make it clear, however, that a CFIUS review would be triggered if the CNOOC bid was chosen, and that it did not openly favor such a deal – indicating a desire for Congress and the Senate to do the dirty work of balancing in this case. Nevertheless, it was clear that the majority of the US legislative branch wanted to block a CNOOC/Unocal deal completely, and the muted response of the Executive branch would not fill CNOOC with confidence about the chances of obtaining approval for its proposed transaction.

Unocal, meanwhile, was still hoping for a bidding war, and continued to hold meetings with both Chevron and CNOOC during this time period, in the hopes of a higher offer. Though CNOOC's original bid was higher, the degree of political uncertainty surrounding it was much greater than Chevron's, which not only had FTC and SEC approval, but which (as a US company) would also not have to face the CFIUS process (see AFX 2005b; Reuters 2005b; Murray 2005). It was thus reported by July 26 that "Unocal management argued that increased risks of government approval and delay outweigh the differential on CNOOC's \$67/share bid" (Taylor 2005). At the same time, it was reported that CNOOC might raise its bid for the company above \$67/share, if Unocal met two demands (Taylor 2005). These were that Unocal: (1) "pay the \$500 million break-up fee for terminating the [original deal with] Chevron" and (2) "take 'specific actions' to help 'influence the US congress' towards a deal with CNOOC" (Taylor 2005). Neither of these conditions would be particularly easy for Unocal to achieve, and the market roundly believed at this point that, while CNOOC still had a chance if it made a higher bid, the political risk of such a deal would probably be too much for either CNOOC or Unocal to accept. As one analyst put it, "the market [was] split" on "how to price political risk" (Natural Gas Intelligence 2005). One of Oppenheimer's analysts claimed that CNOOC "would not want to offer more money without assurances of success" (Taylor 2005).

Despite all of this, many observers in the market and the press still believed that CNOOC would raise its bid. For example, on July 28 it was rumored that "CNOOC Ltd. has drafted plans to increase its \$67/share cash bid to more than \$70/share, valuing Unocal at about \$19.3 [billion], about \$2 [billion] above Chevron's proposal" (Platts 2005). It was also believed that "Unocal's board would need a 10% premium from CNOOC, over and above Chevron's \$63.01/share offer to compensate for risk that US Legislators and regulators would delay or even stop a CNOOC-Unocal merger" (Platts 2005). Rumors even surfaced as late as August 1 that CNOOC was waiting for Congress to recess to announce both a higher bid and a white-knight buyer for Unocal's US assets (Natural Gas Intelligence 2005). Either way, CNOOC's pursuit was dealt a strong blow that same day when the proxy firm Institutional Shareholder Services, "which can at times sway US takeover battles with its recommendations, said it was supporting Chevron because of the significant premium associated with the \$17.5 [billion] offer, as well as the regulatory risks associated with CNOOC's bid" (Guerrera & Polti 2005).

In the following days and weeks, another crucial effort at unbounded intervention was made by the Legislative branch to block a possible

CNOOC/Unocal deal. On August 8, a piece of legislation introduced by Representative Joe Barton, the Energy Policy Act of 2005 (H.R. 6), was signed into law. This law included within it a provision for an extraordinary delay in the conclusion of any deal between CNOOC and Unocal – a delay that effectively killed the deal. Section 1837 of H.R. 6 required that a report be made to Congress assessing the national security implications of the issues relating to China's quest for energy, the use of foreign investment to satisfy those energy needs, and "reciprocity" issues, such as whether or not a US company would be able to purchase an oil company in China (US House 2005a). This section was the result of an amendment made by Congressman Pombo, who "admitted to reporters that his amendment was meant to effectively kill a potential CNOOC/Unocal deal" (Oil Daily 2005a). According to Senator Dorgan, who also supported the amendment, the main motivation behind the request for this study was the delay that it would cause (O'Driscoll 2005). H.R. 6 allowed 120 days for the completion of the report, and effectively mandated that CFIUS could not begin its review of a CNOOC/Unocal deal until twenty-one days after that, in order for its findings to be considered in the review process (US House 2005a; O'Driscoll 2005). Thus, this law ensured that there would be an excessive and onerous delay of 186 days (about six months) before the companies would officially be told if the transaction could be concluded.

Not surprisingly, CNOOC withdrew its outstanding bid for Unocal on August 2, 2005. Its stated reason for pulling out was "the political environment in the US," and the "unprecedented political opposition that followed the announcement of our proposed transaction" (CNOOC 2005). In fact, opposition to the deal was so intense that the Chinese government withdrew its support for the acquisition toward the end of the bidding process (Grimmer 2005). Tensions with the US were already high at the time, as discussed later, and "it was just not worth using up a lot of political capital over, especially with President Hu Jintao heading to the United States in September for his first visit" (Grimmer 2005). By August 10, Unocal held a shareholder meeting to assess the proposed merger agreement with Chevron, after which it announced the approval of Chevron's bid, and Chevron declared the deal complete.

The timeline of events in this case makes it clear that the Legislative branch's strategy of unbounded intervention forced CNOOC to decide that it was unlikely to be able to conclude the deal at all, much less do so in a timely and profitable manner. It was clear that many members of the US government felt the deal needed to be prevented, or blocked if

necessary, on national security grounds. But what were their exact concerns, and what really motivated them, causing Congress to react the way it did to the possibility of a CNOOC/Unocal deal? Were geostrategic issues the main concern? It is clear that the context of the geopolitical relationship between the US and China at the time only intensified opposition to a deal that was never going to be easy in the first place because of the national security issues it raised. Indeed, “Washington attorneys familiar with the deal [said that] . . . CNOOC’s biggest problem in Washington was that its attempt collided with US lawmaker’s growing frustration with the US relationship with China on issues ranging from currency manipulation to trade reciprocity and intellectual property rights” (Kirchgaessner 2005). Or was the failure of the deal caused by “a variety of factors – economic nationalism, superpower rivalry, fears about declining US competitiveness, and worries about energy security – [which] blended into a potent mixture” to prevent CNOOC from taking over Unocal, as some (Molchanov 2005) claimed? The following section will assess the variables hypothesized to be the primary reasons behind unbounded intervention. It should show that while there were many variables influencing government action in this case, the geopolitical issues it raised were clearly the strongest.

Geopolitical Competition

China and the US were, in 2005, as they are now, geopolitical rivals with a highly complex, but mainly amicable, relationship. These states are neither military allies, nor members of the same security community. China is a major, and a rapidly “rising,” power. The relationship between the two countries has long been complicated by each state’s position on the status of Taiwan, which Beijing’s seeks to reintegrate fully, while Washington seeks to defend the “status quo,” thus treading a fine line between its commitment to a military defense of the island and its commitment to a “one China” policy (see US House 2004).

In the summer of 2005, when the CNOOC bid took place, there was a prevailing perception in the US that China was more than just an emerging power. Many saw it as a strategic rival, which had the potential to develop into a military threat in the future.³⁷ Thus, the DOD made clear in its Annual Report to Congress in 2005:

The United States welcomes the rise of a peaceful and prosperous China, one that becomes integrated as a constructive member of the international community. But, we see a China facing a strategic crossroads. Questions remain about the basic choices China’s leaders will make as China’s power and influence grow, particularly its military power. (US DOD 2005, 4)

US unease over China's rapid growth and modernization was amplified by the fact that Chinese military spending is not very transparent (US DOD 2005). For, while the Stockholm International Peace Research Institute (SIPRI) reported its spending in 2005 as \$40,300 million (SIPRI 2006), US DOD "estimates put it at two to three times the officially published figures" (US DOD 2005, 4). This means that China's average military growth over the five years leading up to this case may have been much higher than the already large estimates of 11.31%.³⁸ Yet, though this is far greater than the US' 8.19% average military growth rate over this same period, China's military spending still remained a far second to the US, which totaled \$504,638 million in 2005 (SIPRI 2006).

The US continues to engage China economically, politically, and culturally, and trade between the two countries is highly interdependent. Yet, the relationship between them was strained in 2005 by China's growing economic power relative to the US. In relative terms, China's economy was far smaller at the time: China's GDP at PPP was about 50% of US GDP in 2005, or about 52% if you include Hong Kong and Macao.³⁹ Still, the undervaluation of its currency, the yuan (or renminbi), which some analysts then measured as being undervalued by more than 50%, implies that China's economy is larger than suggested by calculations taken from the official exchange rates, and by 2006 China's economy was the second largest in the world (CIA 2007). As with the examination of military growth rates, China's average economic growth rate outstrips that of the US for the five years before 2005, with China's being 12.13% and the US' remaining at 4.93%.⁴⁰ Not surprisingly, such figures contribute to US fears that China's relative economic power is growing rapidly.

At the same time, a number of other economic issues contributed to heightened tensions between the two countries. In 2005, China was seen by many as a nation whose financial actions would prove threatening to the future of the US economy. The trade deficit with China had reached \$201,544.8 million in 2005 (US Bureau of the Census 2008). There was mounting US pressure placed on China during the summer of 2005 to revalue the yuan, as many in the US believed its undervaluation to be part of an economic policy designed to give China an unfair trade advantage (Preeg 2002).⁴¹ The Chinese government did revalue the yuan by "2.1% against the US dollar" in July of that summer (CIA 2005, 2007), largely as a palliative measure against deteriorating US–Chinese relations during the CNOOC/Unocal bidding process. Other issues straining Sino–US relations at the time included disputes over intellectual property rights and "an escalating trade row" over Chinese export tariffs on textiles (Financial Times 2005a).

The geopolitical relationship between China and the US in the summer of 2005 was thus characterized by heightened tensions over a series of issues, making CNOOC's bid for Unocal more unpalatable to the US government than it might otherwise have been. Indeed, there was "a widening sense among politicians in both parties that China [was] reaping the benefits of free trade without playing fully by the rules," which observers rightly believed would make "steering [the] public debate away from politics . . . difficult" for CNOOC (Linebaugh et al. 2005). At the time, it seemed that the deal was only "raising political tension between two countries with an already strained relationship" (Kirchgaessner et al. 2005). Dick D'Amato, Chairman of the US-China Economic and Security Review Commission (ESRC), even went so far as to ask: "what in [the] relationship [with China] is working?" (Kirchgaessner et al. 2005). Congressmen Barton and Hall made clear their opposition to the CNOOC bid on the grounds that "the Chinese are great economic and political rivals [of the US], not friendly competitors or allies in democracy" (Alden & Kirchgaessner 2005).

Geopolitical tensions between the US and China were further sharpened by the fact that both countries were increasingly competing for access to energy resources, over which there were new worries about scarcity of supply. The US resource dependency ratio in 2005 was 36%.⁴² Though the US was not dependent on China for oil,⁴³ China had recently become highly dependent on oil imports, and the two countries were now actively vying for new sources of supply (CIA 2008). Moreover, an April 2005 IEA Report may have raised fears about the scarcity of oil supplies at the time of the CNOOC/Unocal bid (Greenwire 2005c). All of this, of course, should be understood within the context that, at the time, "most of the world's oil fields [were] already believed to have been discovered, and many of those [were] in oil-producing countries such as Saudi Arabia that [were] off limits to public companies" (Gentile 2005).

In order to appreciate fully the effect of such geopolitical concerns, it is necessary to understand not only the stated rationale behind CNOOC's bid (and the Chinese government's original support), but also what the US government believed to be the *real* motivation behind it. CNOOC claimed that its deal rationale hinged mainly on the large gains to be made to its Asian asset portfolio: a "nearly 80% increase in reserves and a doubling of production," which had hitherto been deficient (FD 2005). According to CNOOC, the bid was one made by a commercial company for commercial reasons only. The company, furthermore, claimed that the Chinese government played no role in its decision to make an offer for Unocal.⁴⁴

Yet, the deal did not necessarily make sense from a purely economic standpoint, for two reasons. First, CNOOC simply did not have the financial wherewithal to pull off its bid without the help of the Chinese government. It lacked the cash for such a high all-cash bid, and clearly needed its “state parent to foot the bill” (Lex 2005c). It was reported that “of the \$16 billion in pledges the company has said it has received for its bid, \$13 billion comes from state-owned Chinese entities, including \$7 billion in long-term and short-term loans from CNOOC’s parent China National Offshore Oil Corp” (Gold et al. 2005; see also FD 2005). Second, CNOOC’s offer would be a financial burden to the company, as the Fitch Ratings Agency (among others) argued that it would negatively affect their credit rating (see AFX 2005b; PR Newswire 2005; Reuters 2005a). CNOOC’s bid was thus perceived as another example of a Chinese company hungry for brands, resources, and assets that could outbid more traditional buyers because of the “extraordinarily cheap financing” it received from its government (Kirchgaessner et al. 2005).

Furthermore, despite CNOOC’s claims of independent action, it was clear that the bid had the backing of the Chinese government. First, the government subsidy indicated to many observers that the deal was to a great extent “backed by a [Chinese] state keen for global influence and resources” (Lex 2005a). Second, CNOOC must have had state backing for the bid because all major foreign acquisitions made by Chinese companies were first required to receive Chinese government approval under Chinese law at the time.⁴⁵ Third, other observers verified that the Chinese government, whether tacitly or actively, was involved in the deal in some way. In fact, “all four of CNOOC’s executive directors” were confirmed to be members of the Communist Party, and David Merjan of the mutual fund William Blair & Co. claimed that “it [was] clear that the Chinese Government [was] exerting . . . pressure on management” (Cheng & Ng 2005).

The geopolitical positioning of the two countries vis-à-vis world energy resources also forced US policymakers, for good or ill, to assume that CNOOC’s bid for Unocal was part of a larger Chinese government policy of trying to gain access to oil resources abroad. A number of market and foreign policy analysts agreed that the Chinese government was using all means available, including the acquisition of foreign companies and the conclusion of JVs abroad through its state-owned national oil companies (NOCs), in order to meet energy demands at home, and to secure supply lines for the future.⁴⁶ James Sweeney, an energy economist and Director of the Precourt Institute for Energy Efficiency at Stanford University, publicly argued that CNOOC’s bid for Unocal was about “security of supply” because “China want[s] to control supply

themselves,” and such a deal would arguably give them that control (Greenwire 2005b). The former Executive Director of the IEA, Robert J. Priddle, said at the time that China was “in a panic” because “they’re relatively newly dependent on oil imports, and think they must do something to secure their own supply” (Blustein 2005). Similarly, an oil market analyst with Foresight Research Solutions claimed that the race for Unocal was “just round one in the fight for strategic energy resources” (AFX 2005b). McKinsey’s Paul Gao maintained that the Chinese “government [was] pushing to create national champions to reduce dependence on foreign technology,” giving it “a mandate . . . to look overseas for deals” that would help it accomplish this goal (Kirchgaessner et al. 2005).

Indeed, it was quite clear that the Chinese NOCs *were* busy actively concluding deals with companies in Canada, Sudan, and Venezuela, among other countries (see Greenwire 2005a; Chen 2005). The expansion of Chinese M&A activity during 2005 also included a number of big deals in the oil and gas industry (AFX 2005b). At the time of the CNOOC/Unocal case, for example, China Petroleum & Chemical Corp. was looking to buy the Canadian company Husky Energy Inc., and two separate Chinese companies (Sinopec and CNOOC) bought stakes in Canadian oil sands development projects (Chen 2005; Reguly 2005). Such activity, as discussed later, heightened the fears of some in the US government that the Chinese government was using its NOCs to gain access to foreign oil reserves. Congressman Hunter, for example, was clear that part of his concern emanated from the fact that “China [was] in the business of making strategic acquisitions” (Orol 2005c) for the purpose of gaining access to both resources and technology.⁴⁷

One of the fundamental issues for members of the US legislative branch, therefore, was *energy security*. A strategic competitor for natural resources was seeking to buy a US company with US assets when it was believed that there was a Chinese government strategy of systematically seeking resources through the use of the “free” market, and there was no guarantee that such a rival might not then take those freely acquired resources “off the market” in the future. For while market analysts generally assumed that CNOOC was only interested in the Asian assets of Unocal, there was no actual guarantee that CNOOC would sell off Unocal’s American assets as promised. CNOOC had been vociferous about the fact that it was willing to give up Unocal’s US assets in order to get through the CFIUS review process – a tactic that it fully expected to work.⁴⁸ However, CNOOC’s advisor from JP Morgan, Charles Li, made it quite clear to investors that CNOOC had no intention of selling the US assets unless forced to by the US regulatory process.⁴⁹ Though the

US assets involved were relatively small in size, they were of symbolic importance in the context of a greater debate over whether a Chinese state-owned company might divert supplies solely to China in an energy crisis, pulling those reserves off the market and making them unavailable for purchase at any price. Priddle, from the IEA, claimed that a CNOOC/Unocal deal would not “change the price of oil, or the availability of oil,” because these factors would be governed solely by the rules of supply and demand (Blustein 2005). Jerry Taylor of the CATO Institute made basically the same argument to a House Armed Services Committee hearing, claiming that even if China were to pull such supplies from the market, the US could replace them by paying for equivalent supplies from other sources (Kudlow 2005). The three other major witnesses at the hearing, however, completely disagreed with this assessment, instead arguing that the Communist regime was likely to divert those resources if necessary, that those resources would then be going to a rival, and that the market would not necessarily be able to fill the gap.⁵⁰ One of those witnesses, Thomas Donnelly, a member of the US–China Economic & Security Review Commission, believed “there [was] a fairly strong argument” for blocking the deal “not simply because Unocal is a national asset,” but also because of “the strategic question of how China is approaching energy supplies” (Kirchgaessner et al. 2005). Indeed, the letter sent from Congressmen Barton and Hall to President Bush stated that “this transaction poses a clear threat to the energy and national security of the United States” (Barton & Hall 2005). Their argument was that:

This sale would be a mistake under almost any circumstance, but it would be especially egregious at a time when energy markets are so tight and the US is becoming even more dependent on foreign sources of energy . . . US national energy security depends on sufficient energy supplies to support US and global economic growth. But those supplies are threatened by China’s aggressive tactics to lock up energy supplies around the world that are largely dedicated for their own use. China has used its state-owned oil companies to advance this strategy, by buying up energy assets around the world without regard to human rights and environmental protection, in countries such as Sudan and Iran. And unlike other companies, these resources are not available to the global market. (Barton & Hall 2005)

Similarly, Congressman Hunter announced his “intention to oppose the sale” (International Oil Daily 2005b), which he saw as a security threat not only because China could try to block US access to Unocal’s oil assets in Asia, but more fundamentally because it could shift the geopolitical balance of power in Asia. Referring to “investments by Unocal in pipelines running from Caspian sea oil fields through

Azerbaijan, Georgia, and Turkey,” Hunter claimed that “China’s purchase of Unocal would dramatically increase its leverage over these countries, and therefore its leverage over US interests in those regions” (Eckert 2005). Observers were also concerned that Unocal had terminals that were part of the US Strategic Petroleum Reserve (see e.g., Murray 2005; LA Times 2005).

Energy security, however, was not the only concern sparked by the geopolitical tensions between the two countries. Congress was equally concerned by a number of national security issues that were raised by the perception that the Chinese government backed such foreign takeovers in order to gain access to technology that had dual-use applications, thus helping China to enhance its military (or other forms of) power. Again, the text of Congressmen Barton and Hall’s letter gives us an insight into the concerns of the legislative branch on this issue. They stated that:

In addition to this obvious threat to our energy security, the acquisition of Unocal by a Chinese state-owned company poses other risks to our US national security. As a significant player in the US energy industry, Unocal uses a host of highly advanced technologies necessary for the exploration and production of oil and gas. Many of these technologies have dual-use applications. Given the potential military threat posed by China to our allies in Asia and our security interests, it is of the utmost importance that US export control laws be strictly applied to ensure that no sensitive technology falls into the hands of the Chinese government – or, through China, other, more dangerous regimes around the world – which can later be used to undermine our national security. (Barton & Hall 2005)

The SVP and CFO of CNOOC, Hua Yang, had likely confirmed some of these fears when he told investors during a conference call that the deal was desirable because it involved “technical advantages” such as “Unocal’s leading deepwater drilling technology[, which] would extend CNOOC’s exploration capability” (FD 2005). Yang also stated a desire “to retain substantially all Unocal employees” because they included “a highly skilled management and technical talent pool” that was “driving this technology” (FD 2005), confirming the general belief that CNOOC was as interested in Unocal’s technology and expertise as it was in its physical assets.

In the end, there were five major technological and defense-related national security concerns raised during the bidding process. The first was Unocal’s deepwater drilling technology. CNOOC was actually formed by the Chinese government “in the early 1980s to explore and develop undersea oil and gas fields” (Gold et al. 2005), but did not have the advanced technology Unocal possessed. In fact, the Research Director of the NBR Energy Security Program, Mikkal Herberg, foresaw

that the Chinese company's bid would "incite a 'firestorm' in Congress" because of Unocal's "very good deep-water exploration skills, developed in projects off of Indonesia and Mexico that could have military applications," which "critics are likely to 'question letting . . . fall into the hands of the Chinese government'" (Cincinnati Post 2005). Richard D'Amato, Chairman of the US-China Economic Security Review Commission, made similar comments during the House Armed Services Committee hearing on the CNOOC bid (Orol 2005c). Second, the related underwater mapping capabilities Unocal possessed were also reportedly one of the causes of concern. "Trade and security analysts" at the time claimed that Unocal's "underwater terrain-mapping technology used for offshore oil exploration . . . might also be useful in navigation for the Chinese military's growing fleet of submarines" (Lohr 2005). The third concern was raised "in [an unpublished] letter to Energy Bill conference Committee Chairman Joe Barton" by Congressman Pombo, who "pointed out Unocal could have important technologies to access oil shale resources" (Oil Daily 2005a). The fourth issue was Unocal's alleged possession of a rare earth mineral mine that the US government would not want under foreign government control for strategic reasons, because the metals involved reportedly "have military functions for laser technology" (Orol 2005c). Congressman Joe Schwartz (R-MI), for example, showed his concern by stating: "these kinds of metal technology are important to our defense posture" (Orol 2005c). The final issue raised on pure national security grounds was related to US missile defense capabilities. This issue was, again, raised by D'Amato at the House Armed Services Committee hearing, when he "noted that Unocal has 14 offshore oil platforms in Alaska and the Gulf of Mexico that are near important US defense strategic facilities, an apparent reference to missile defense operations in those regions" (Orol 2005c).

In sum, the Sino-US geopolitical relationship in 2005 was mostly characterized by rivalry. Congress clearly defined energy security as a "national security" issue in this case *because* of that geopolitical context. It is also not surprising that within the context of these geopolitical and deal-specific concerns, many in the US government saw the deal as a Chinese "power grab,"⁵¹ and therefore sought to intervene to block it outright. Despite this, both countries recognized their mutual economic dependence, and appreciated the need for constructive engagement, which led to mutual efforts and policies geared toward the maintenance of an overall amicable relationship. It was this recognition of mutual self-interest in a constructive relationship that eventually led the Chinese government to pull its support for CNOOC's bid for Unocal. This case, therefore, clearly shows that states can effectively use unbounded

intervention, in line with the purpose of non-military internal balancing, to balance the power of another state without endangering the greater relationship between themselves and that state.

Economic Nationalism

The US is not usually associated with economic nationalism, yet as with many states there remain distinct pockets of such nationalism among members of the US government and its institutions. One source in the legal community that often deals with CFIUS cases pointed out that among all of the US government institutions, the only one that seems to continuously retain elements of economic nationalism is (perhaps not surprisingly) the Department of Commerce, which *is* one of the agencies involved in the CFIUS process. Thus, while national pride in the US is relatively high,⁵² instances of economic nationalism in the US are usually fairly targeted and rare. Notably, they have largely been caused in the past by massive influxes of FDI from a particular state, as witnessed by the reaction and response in the US to the huge increase in FDI from Japan in the 1980s.

Some observers made comparisons between the Japanese case and the CNOOC bid, indicating a belief that economic nationalism might be to blame for government intervention (see e.g., Reguly 2005). Part of this was rooted in the fact that the CNOOC bid, if accepted, would have been “China’s largest overseas investment ever” (Timmons 2005). Part can be explained in the context of a general expansion of overseas Chinese M&A activity, which included not only the oil and gas deals already mentioned, but also two recent high-profile Chinese purchases in unrelated US industries: Lenovo bought IBM’s personal computing (PC) business in 2004 for \$1.25 billion and Haier was bidding over a billion dollars for Maytag at the time of the CNOOC bid (Reguly 2005).⁵³ Thus, an element of economic nationalism may indeed have existed against Chinese investment generally, which was particularly aroused by this case, as it would have been the largest Chinese investment yet in a strategic industry in the US. In fact, it does seem true that this case marks the beginning of a period of somewhat increased economic nationalism in the US generally, at least relative to its previously low levels of that sentiment.⁵⁴

There are some very important differences, though, between the US response to the CNOOC bid and its response to Japanese investment in the 1980s. First, unlike the Japanese in the 1980s, “Chinese companies seem more interested in industrial businesses than trophy assets” (Kirchgaessner et al. 2005). This was of more than symbolic importance, when

many in the US government believed that the Chinese government had a policy of supporting/encouraging foreign takeovers through which it could gain technology and resources. This fact, and the geopolitical context between the US and China, made the influx of Chinese FDI much more worrying for the US government. Senator Schumer (D-NY), for example, pointed out that: “Japan was an ally, and Japan was fundamentally a smaller country than we are. [But] China is emerging as a dominant player, and at the same time, China isn’t acting like one. It isn’t playing by the rules” (Murray 2005).

It was for this reason that those concerned with the economic consequences of a possible CNOOC deal believed the issue was (or simply framed it as being) a matter of *economic security*. Certainly, there was a big push throughout the whole debate over the deal to change the way CFIUS defines national security, and to get economic security issues, such as oil, included in the definition (see Graham & Marchick 2006, 75, 172; Jackson 2007; Lohr 2005). On June 22, for example, Congressman Pombo said he did “not believe it is in the best interest of the US to have Unocal owned by the Chinese national government,” as it could have “disastrous consequences for our economic and national security” (Greenwire 2005b).

It could be argued that this concern over economic security was an example of economic nationalism. “Some analysts,” indeed, claimed that CFIUS was “being used as a weapon of economic nationalism” by some of the congressman involved (International Oil Daily 2005c). Other scholars, like Graham and Marchick, feared the inclusion of economic security in the national security criteria used by CFIUS could prompt the review process to “become even more politicized,” and possibly allow “domestic companies to exploit the CFIUS process against foreign bidders” in the future (Graham & Marchick 2006, 143). Indeed, the July 1 House Resolution called on the deal to be blocked, given that “oil and natural gas resources are strategic assets critical to national security and the Nation’s economic prosperity” (US House 2005c).

Despite this, it is important to understand that Unocal was never trumpeted as a national champion, and that the US does not really have a history of protecting national champions per se. As one observer poignantly noted: “Unocal is not an economic or cultural icon. For Americans it is holier than that; it’s an oil producer” (Reguly 2005). Indeed, neither members of the US government, nor lobbyists, nor pundits, went so far as to call Unocal a national champion; it was a relatively small oil company that provided only a minor portion of the US oil supply. Moreover, the US did not block Chinese efforts to purchase Maytag or IBM, which could have been viewed as national champions

in their industries. Within the oil and gas industry, furthermore, the US did not seek to block British Petroleum's (BP's) purchase of Amoco in 1988 or Petróleos de Venezuela's (PDVSA's) purchase of CITGO in 1990, which were arguably of much greater economic importance. In fact, unbounded intervention through CFIUS, or otherwise, was rare on the part of the US before the CNOOC case. For instance, at this time the only transaction to have been formally prohibited by the US President was, interestingly, when in 1989 the China National Aero-Technology Import and Export Corporation (CATIC) bought – and was ordered by the President in 1990 to wholly divest – the US company MAMCO Manufacturing (Bush 1990). The intervention was made “to protect national security,” because MAMCO was the sole supplier of certain airplane parts in the US and CATIC was owned and operated by the Chinese government's Ministry of Aerospace Industry, which had clear ties to the Chinese military (Bush 1990). After that, one of the largest efforts made to block a deal before the Unocal case was when a Chinese military-owned company (COSCO) tried to lease terminal space at the former US naval base in Long Beach, California.⁵⁵ It would therefore be difficult to argue that the US has a history of supporting national champions against foreign takeovers, but clear evidence can be found of concern over Chinese state-owned corporations pursuing takeovers of US companies for national security reasons.

Thus, while there was an element of economic nationalism to the efforts of some members of Congress who sought to block the deal on the grounds of “economic security,” these concerns were largely present and intensified *because* of the larger geopolitical context of the case. Furthermore, these concerns were consistently accompanied, and overshadowed, by anxiety over the national security issues just discussed.

Presence of Interest Groups

The majority of the lobbying in Congress for or against CNOOC's bid for Unocal was backed by either CNOOC or Chevron themselves. Indeed, once it became clear that the two would be battling for control of Unocal, both companies “hired public-relations firms to press their respective agendas” (Gold et al. 2005). As demonstrated in this section, Chevron's lobbying efforts played an undeniable role in making members of Congress aware of the national security issues posed by CNOOC's bid. Yet, it will also be argued that these lobbying efforts played on pre-existing national security concerns, and would not have resonated with Congress outside of the geopolitical context of this case.

Chevron was definitely the biggest and primary interest group actively lobbying against CNOOC's bid. The Vice-Chairman of Chevron, Peter Robertson, immediately declared that he felt Chevron was "competing with the Chinese government and . . . that is wrong," because "clearly, this is not a commercial competition" (Mouwad & Barboza 2005). Chevron went much further than scathing commentary, however. In fact, it was "Chevron lobbyists [who] helped draft language for at least one letter [that was] circulated by lawmakers to Treasury Secretary John Snow, [which] warns that CNOOC's bid for Unocal . . . challenges American jobs, energy production and national security" (Pierce & Newmeyer 2005). They also "provid[ed] Member offices with information to support th[ose] claims," and even helped "to gather signatures for the letter to Snow" (Pierce & Newmeyer 2005).

A history of campaign contributions to certain members of Congress by Chevron was also considered by many to have helped its cause. Californian representatives, where Chevron was based, obviously had a vested interest in looking out for the company (International Oil Daily 2005a). It is also important to note, however, that "both [Congressmen Hall and Barton] have received significant contributions from Chevron Corp. and Texaco" in the past (Orol 2005d). The Center for Responsive Politics had released information that "Barton received \$19,000 . . . while Hall received \$9,500" from these companies (Orol 2005d). It was also reported that Congressman Pombo had received \$13,500 from Chevron (Alden & Kirchgaessner 2005). It is unlikely, however, that these contributions (the exact timing of which are unspecified) would alone have swayed these congressmen into such active opposition to the CNOOC deal. Many domestic companies that later end up in bidding wars with foreign companies contribute to lawmaker's campaigns, and yet it is extremely rare for those lawmakers to come out so vociferously against a foreign takeover.

Thus, it is highly unlikely that Chevron's lobbying could have been effective without there first being genuine national security and geostrategic issues for it to play upon. To be sure, it was reported at the time that "Chevron Lobbyists are finding a warm reception to the patriotic message they have been pitching on Capitol Hill, especially among Members with oil and gas interests in their districts as well as those with long-standing national security concerns" (Pierce & Newmeyer 2005). For example, Congressman Barton's spokesman Larry Neal responded to criticism over the congressman's position (raised because he had received donations from Chevron in the past) by saying: "Chairman Barton has consistently opposed advancing Chinese governmental interests" (Pierce & Newmeyer 2005).⁵⁶ Thus, the general consensus (not

surprisingly) was that “while Chevron skillfully drummed up opposition to CNOOC’s bid in Washington, it was merely tapping into already existing anti-China sentiment” (EIU 2005).

Outside of Chevron’s lobbying efforts, there was one former policy-maker in particular who lobbied vociferously against the deal, both as a witness at the House Armed Services Committee hearing and through press, TV, and radio interviews. This was Frank Gaffney, a former member of the Pentagon under President Ronald Reagan and, at the time, the head of the Center for Security Policy. Gaffney took a realist approach to the deal, arguing that China was not an ally and, as already mentioned, that he was worried it was using the deal to gain access to resources it would then make unavailable to the US in the future. While his arguments were well received at the hearing, they lost some support in the public when he lost his realist rational tone and went so far as to call those in favor of the deal “panda huggers” (Kudlow 2005).

CNOOC, however, had also hired a small army of lobbyists and advisors, which it used to counter the image Chevron painted of its intentions. CNOOC actually hired “three investment banks, a pair of media strategy groups, and four law firms” (Linebaugh et al. 2005). The firms hired to “manage the media firestorm” were “Public Strategies Inc., a firm with close ties to the Bush White House, and Brunswick Group, which handled the corporate meltdown at the energy company Enron” (Pierce & Newmeyer 2005). The law firms included Akin Gump Strauss Hauer & Feld, which also was reported to have close “connections to the White House” (Linebaugh et al. 2005; Pierce & Newmeyer 2005). Public Strategies diligently argued, as did CNOOC itself, that the transaction was meant to be a purely “commercial deal” (Gentile 2005). It was also reported that CNOOC’s many lobbyists anticipated the arguments put forward by those against the deal,

and prepared an aggressive response. CNOOC’s Chairman immediately sent letters to every member of Congress and to the media. He argued that a Unocal purchase was not a threat to the US at all. Most of Unocal’s assets are in Asia, not America. And CNOOC [would] sell whatever Unocal holdings are [in the US]. Unocal’s US employees [wouldn’t] have to worry either. CNOOC [would] not fire any of them, he wrote. (Davidson 2005)

CNOOC also had a variety of other interest groups on its side, which were not paid lobbyists, but which (for various reasons) had a vested interest in making sure that the bid was not blocked. The US Chamber of Commerce, the one institution from which we might possibly expect an economic nationalist response, publicly announced that it was not against a CNOOC bid for Unocal (Kirchgaessner et al. 2005). Indeed,

a number of economic liberal groups were concerned that the market should be allowed to work. The National Foreign Trade Council, which wished to encourage more FDI from China, tried to speak out against the “paranoia” surrounding the deal (Kirchgaessner et al. 2005). Similarly, the National Association of Manufacturers had spoken out against “China’s manipulation of its currency,” but it maintained “a relaxed stance on takeovers” like many other business lobbies, which, again, welcomed such Chinese FDI (Kirchgaessner et al. 2005). Finally, Jerry Taylor, of the libertarian think-tank the CATO Institute, spoke out often against blocking the deal, usually arguing against Gaffney’s position. In fact, he was the only witness at the July 13 Congressional hearing who believed the national security concerns were overblown (AFX 2005c), on the basis that the purchase would not pose a threat to US security because, among other reasons, the US would still be able to purchase oil on the open market.⁵⁷ Others who were advocates for the deal included Albert Keidel of the Carnegie Endowment, who argued that the US must:

engage China in a rules-based global system, as the bedrock for our national military security . . . If we try to create a non-price based system for securing or guaranteeing energy resources or other scarce resources, we will be creating a climate that will force China into a similar posture. And that is dangerous, in a national military-security sense. (Voice of America 2005)

It should be noted that, despite all of this lobbying, two important and influential players in the case remained neutral. The first is the White House, which argued that it would reserve judgment on the deal until it received a report from CFIUS, when – and if – that process was triggered by a transaction agreement between CNOOC and Unocal (see Wright 2005).⁵⁸ Part of the desire to appear neutral may have been because Secretary Rice had previously served as member of Chevron’s board (International Oil Daily 2005a). The Administration was very clear that the decision would be made on the merits of the national security assessment of the deal presented to it by the appropriate agency, and that it would not be swayed by interest group efforts.

The second group that remained neutral, and un-swayed by lobbyist pressure, was Unocal itself. As already mentioned, it was quite clear that Unocal’s CEO Charles Williams wanted a bidding war, and was actively speaking to both companies throughout the whole process. “Unocal spokesman Barry Lane,” for example, made it clear that “his company [was] not actively lobbying Congress on the issue, but [was] considering the CNOOC counter bid” (Pierce & Newmeyer 2005). It was also apparent that Unocal’s shareholders, one of the most important

interest groups in the takeover of a public company, wanted the highest price possible for the company, no matter who the eventual owner was. Two minority shareholders even went so far as to sue “[Unocal’s] board of directors for a breach of their fiduciary duty to the shareholders, . . . contending that the directors failed to test the value of the company fully in the marketplace before hastily accepting Chevron’s [original] proposal” (Amaewhule 2005), despite the board’s comments that it would still consider CNOOC’s later offer.⁵⁹

There also did not seem to be any sort of true labor or union movement against the CNOOC bid, which might have been effective if it had been present. This was probably because of CNOOC’s constant claims that it would “seek to retain substantially all Unocal employees” (FD 2005). CNOOC Chairman Fu Chengyu said that the deal would be “good for America,” because CNOOC “[would] protect Unocal’s US jobs” (Gold et al. 2005). The attorneys general of some states affected by the deal worried that the CNOOC bid might negatively affect Unocal pension plans and its promises on the environment (International Oil Daily 2005b).⁶⁰ Yet, these concerns were directed toward Unocal itself, not policymakers, and they did not turn into a widespread movement or seem to have any impact on the deal.

Thus, while some interest groups were pressing for the US government to block a CNOOC/Unocal deal – namely, those sponsored by CNOOC’s competitor Chevron – these groups were not the primary motivation behind the US government’s strategy of unbounded intervention. For there was an equal amount of pressure on the government coming from CNOOC’s lobbyists, as well as from independent free-market and liberal interest groups. Furthermore, it is likely that even if the Chevron-sponsored groups had not lobbied against the deal, a number of these national security issues – especially those involving technology – would have been flagged in the CFIUS process anyway. Finally, Chevron was really only able to make lawmakers aware of existing national security issues involved in the deal, and was not able to coerce them into action. It would not have been able to have any effect on Congress if the geopolitical context of the deal had not been as it was, meaning that interest group presence – though it may have played a role in making legislators aware of the case earlier – was not the *primary* motivation behind government intervention into this foreign takeover.

Competition Concerns

Importantly, no real competition issues were involved with either CNOOC’s or Chevron’s bid for Unocal. Indeed, the Chevron/Unocal

deal received competition clearance from the Federal Trade Commission by June 10, 2005, and no competition problems were expected to arise from CNOOC's alternative bid. "Marc Schildkraut, an attorney with law firm Heller Ehrman, said he [did] not see antitrust problems for the CNOOC-Unocal deal, commenting, 'It's extremely rare for the FTC to care about upstream deals'" (International Oil Daily 2005a). In fact, the only evidence of any concern on this issue comes from Charlie Crist, the Florida Attorney General, who wrote a letter to John Snow urging a review of the deal, because "[he was] concerned about the impact of increasing concentration in the petroleum industry on gasoline prices" (AFX 2005d). Yet, Snow's only comment on the deal was that it would be reviewed if the CFIUS process was triggered, and he did not evince any concern on competition grounds. Indeed, the general consensus of the market seemed to be that "whatever legal tools might be used to block a deal, antitrust probably won't be one of them," because "there is little to suggest an excessive concentration of ownership in the worldwide oil industry" (Orol 2005a).

Finally, it should be noted that the US is generally considered to be one of the most competitive economies in the international marketplace, in the sense that it is a state open to liberal economic business practices and foreign investment.

Conclusions on CNOOC/Unocal

Thus, it must be concluded that unbounded intervention in this case was primarily motivated by the geopolitical issues surrounding the Chinese state-owned company's bid for Unocal, and secondarily by economic nationalism. Interest group presence may have also played a much smaller, tertiary, role in motivating intervention. Yet, it is important to note that neither economic nationalism nor interest group presence would have had the effect that they did in the absence of the geopolitical context, without which those opposed to the case would not have been able to gain the support that they eventually found. Finally, competition issues did not seem to play any significant role.

Unbounded intervention in this case was, thus, clearly an example of non-military internal balancing. CNOOC's bid, and the presumed role played by its state-owned parent company, caused apprehension over the use by the Chinese government of its rising economic power to "buy" power in the form of companies that would supply it with resources, knowledge, and technology. Furthermore, certain members of the US government did not wish to allow China to win the "energy race" through the use of government-subsidized asset purchases that

might result in control over vital resources. Therefore, intervention was about preventing a transfer in those forms of relative power from occurring. While this situation, in the context of increased Chinese FDI in the US, did arouse a certain amount of economic nationalist sentiment, intervention was *not* about saving a national champion (as it was in the Danone case). It was about intervening in a market transaction to prevent the loss of relative power to a strategic rival. For, while the CNOOC case was in process, Secretary Rice visited China and made it clear that the US government was aware of “a significant military buildup going on [in China], that is concerning, [and causing the US to] . . . have concerns about the military balance” (Rice 2005). Indeed, those who objected to the deal seemed to honestly believe that the sale of Unocal to CNOOC could lead to the transfer of military technology and of resources that could also eventually be used by the Chinese military. Others, as already mentioned, were concerned that ownership of the company would give the Chinese government more social power and influence in Asia, or even provide it with the ability to gain more power over Taiwan (see e.g., States News Service 2005a). As one member of the US–China ESRC noted, the US was not dealing with “a market economy,” because “[China] see[s] resource acquisition as an integral part of their military plans. We need to look at it on the same basis” (Blustein 2005). Similarly, former CIA director James Woolsey called CNOOC’s attempt to take over Unocal a “sharp elbow” (Eckert 2005) from a bully, and said that “anyone who believes this is a purely commercial undertaking . . . is extraordinarily naïve” (Ivanovich 2005).

Finally, the CNOOC/Unocal case provides an excellent example of unbounded intervention as *non-military* internal balancing. This is because the “balancing” was targeted and finite, and used a tool that was not expected to – and ultimately did not – damage the overall relationship between the two countries involved.

Case 3: Check Point/Sourcefire

The Story

On October 6, 2005, Check Point Software Technologies Ltd. (an Israeli company) made a mixed cash and share offer for Sourcefire Inc. (a US company) for about \$225 million. At the time, both companies specialized in security software, and both provided software to the US government, making the deal seem like a smart fit to market and tech analysts alike.⁶¹ The deal rationale provided by the companies was that

Sourcefire's intrusion prevention system (IPS) software (including a well-known open-source system called Snort) would complement and "strengthen Check Point's perimeter, internal, Web and endpoint security portfolio," allowing it to "expand" into the "fast-growing intrusion prevention and network awareness" business (Check Point 2005).⁶² This rationale was well received, and the deal quickly gained the support of the "boards of both companies as well as Sourcefire shareholders" (Vaas 2005), after which it was subjected to an initial thirty-day CFIUS review and the Hart–Scott–Rodino anti-trust process.

On February 13, Check Point confirmed that CFIUS had decided to pursue a further forty-five-day investigation of the deal (Check Point 2006a), and that both companies were cooperating in that process.⁶³ Though the proceedings of the investigation itself are classified, and the Treasury Department refused to officially comment on whether or not the deal would have made it through the investigation unscathed, it emerged that several objections were raised to the deal while CFIUS performed its review (see Dagoni 2006; FD 2006; Lemos 2006).⁶⁴ The primary reported objection was against allowing a foreign company (any foreign company) to take control of a software company that provided computer network and systems security for a number of US government agencies, including the Federal Bureau of Investigation (FBI), the DOD, and the National Security Agency (NSA) (see Dagoni 2006; Greene 2006; Rothman 2006; Williams 2006). These agencies "expressed concern" that the deal "[put] their networks at risk" (Rothman 2006) and would have allowed Israel to "acquire sensitive technology" related to "the implementation of Sourcefire's anti-intrusion software 'Snort'" (Williams 2006). Peter Cooper, a Morgan Stanley analyst, claimed "CFIUS feared that the takeover would expose SNORT to manipulation by a non-US entity" and "that Check Point would shut down the open source software and limit accessibility by users," because "similar occurrences (unrelated to Check Point) had happened before" (Dagoni 2006).

Objections may also have been raised to Check Point, specifically. For, while the company had a "National Security Agency certification" and "has had success in US government security projects," some commentators questioned whether there was concern over the security of the company itself (McLaughlin 2006). One observer, for example, suggested that certain members of government might have had "a dim view of the close ties between key Check Point executives and the [Israeli Defense Forces], especially unit 8200," which handles signals and encryption intelligence (Dagoni 2006). Additionally, an industry source claimed at the time that "government contractors [had] told him

that they [were] strictly prohibited from using Check Point software” (McLaughlin 2006).

Either way, it seems that enough concerns were raised during the CFIUS process to assume that the government’s actions were tantamount to unbounded intervention. Throughout the process, it was clear that either the deal would be blocked or the requirements placed on both companies would be so onerous, and the delay to the completion of the deal so great, that Check Point would withdraw its offer voluntarily. For instance, “in private meetings between the panel and Check Point, FBI and Pentagon officials” made it obvious to the company that they “took exception to letting foreigners acquire the sensitive technology” (Williams 2006). Apparently, Check Point’s “lawyers had tried to salvage the deal by offering to attach conditions intended to satisfy the Feds, despite execs feeling they were onerous,” but “agreement could still not be reached” between the parties (Williams 2006). It was even reported that “the US [government] made the approval process so miserable for both parties that they threw in the towel” (Rothman 2006).

Thus, on March 23, 2006, Check Point announced that it was withdrawing from the CFIUS process, a week ahead of the recommendation the Committee was due to make to the President regarding the deal (Lemos 2006). CFIUS agreed to its withdrawal, and Check Point declared in a press release that it was now seeking a simple “business partnership” with Sourcefire, rather than continuing to pursue its acquisition of the company (Check Point 2006b; Dagoni 2006). Check Point also released a statement providing its rationale for abandoning the transaction, stating that “given the complex technology, the complexity of the process, [and] the current scrutiny of CFIUS, we have come to the conclusion that it may be simpler and better to pursue other partnership alternatives or take more time to work with the government” (Lemos 2006). Sourcefire’s Chief Marketing Officer similarly blamed the pullout on “the complexities of the overall CFIUS process, the lengthy ongoing delays and the current climate for international acquisitions” (Chickowski 2006). One industry source believed that “the government” may have “put forward requirements that the companies found unacceptable” or that “CFIUS was dragging its feet” on purpose (Brockmeier 2006).

Yet, it was more than the costly delays and complex negotiations that scuttled the deal. For a number of analysts agreed that “the Bush Administration would have vetoed the Check Point . . . Sourcefire deal and that withdrawal from the acquisition was the only way for Check Point to avoid being branded a security risk” (Dagoni 2006). Thus, in the end, the deal was dropped because of unbounded government intervention:

multiple objections were raised by the government agencies that took part in the CFIUS investigation, the process was lengthy and difficult enough to be viewed as discouraging the transaction, and it was overwhelmingly believed that the deal would be blocked by the government at the end of that process.

Because Sourcefire's spokesman had mentioned the "current political climate," some observers blamed the government's intervention, and thus the ultimate failure of this deal, on the negative attitudes toward FDI raised by the DPW dispute, which was in full swing by the time Check Point withdrew from the CFIUS investigation.⁶⁵ Yet, the member agencies of CFIUS had raised objections to the deal long before the ports row began (Weisman & Schmidt 2006).⁶⁶ Furthermore, the nature and tenor of their concerns, which were not politicized by lawmakers as they were in the DPW transaction, suggest that the DPW dispute did not play a significant role in motivating government intervention in this case, as the software deal was unlikely to survive the CFIUS process anyway (see e.g., Brockmeier 2006). Indeed, the only role the ports dispute may have played was to contribute to the belief on the part of Check Point that its bid would be blocked by CFIUS, though it has yet to be proven that CFIUS can be swayed in its recommendations by political pressure, and enough reasons can be cited for the deal to have been blocked beyond the existence of a negative "political climate."

Geopolitical Competition

Though the US and Israel are not formal military allies,⁶⁷ the historical relationship between them has been extremely close, and is considered by many to constitute a security community (see Adler in Katzenstein et al. 1996, 434; Adler & Barnett 1998, 33). For, "even though there is no treaty obligation" between them, "President Bush has said several times that the United States would defend Israel militarily in the event of an attack" (Migdalovitz 2007, 23), a fact ensured by the close historical, diplomatic, and political relationship between the two countries.⁶⁸ As Adler points out, however, even this "special relationship" can be subject "to corrosive forces," and will, therefore, at times experience tension within it (Adler in Katzenstein et al. 1996, 434).

At the time of this particular transaction, for example, tensions between the two countries had only just begun to ease after a 2003 dispute over "Israeli arm sales to China," which caused the "annual inter-agency strategic dialogue" between the two countries to be suspended until November 2005 (Migdalovitz 2007, 29–30). And while Israel itself is obviously not perceived as a strategic competitor or general threat,

US government agencies remain concerned that its lack of cooperation on issues relating to US export control laws could negatively impact US national security.⁶⁹ Part of the problem has been that Israel is not a party to any of the multilateral export control regimes, and only “voluntarily adhere[s] to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies” (Migdalovitz 2007, 32; SIPRI 2004). Just over a month before Check Point made it its bid for Sourcefire,

the US DOD and the Israeli Ministry of Defense issued a joint press statement reporting that they had signed an understanding “designed to remedy problems of the past that seriously affected the technology security relationship and to restore confidence in the technology security area. In the coming months additional steps will be taken to restore confidence fully.” (Migdalovitz 2007, 25)

Given this climate, it is not surprising that the US would be concerned about the purchase of a US company, which developed network security for its federal agencies, by an Israeli one. For, as one industry commentator noted, even among the closest of “allies, . . . all bets are off relative to source code” (Rothman 2006).⁷⁰ Indeed, a great deal of legitimacy would have been given to the concern that the sensitive code, which would have been purchased as part of this deal, might be passed on not only to the Israeli government, but also possibly to third-party governments that might be on less friendly terms with the US.

While it seems clear that these geostrategic concerns provided strong motivation for the US government’s unbounded intervention in this case, it is unlikely that any of the remaining geopolitical factors to be examined in this section played such a significant role. First, it is unlikely that US resource dependency played any role in this case. The level of US resource dependency, while not low at 36.35% in 2005 and 37.68% in 2006, is also not excessively high compared to that of other nations.⁷¹ Moreover, Israel is not a major supplier of energy to the US, providing just 0.04% of US imports of crude oil and petroleum products in 2005 and 2006 combined (EIA 2008c). Second, the relative power differential between the two countries is not only decidedly in the US’ favor, but does not seem to be changing in any significant way. Unlike the US, Israel is not considered a major power, and it is also not considered a rising power. The five-year average economic growth rates of both countries remained largely similar.⁷² Furthermore, Israel’s military expenditure remained under 2.5% of that of the US, and its five-year average military growth rate actually declined during 2005 and 2006, while that of the US increased.⁷³

Economic Nationalism

As discussed in the CNOOC case, the level of economic nationalism in the US was considered to be fairly low.⁷⁴ Sourcefire was never referred to as a national champion and, though it is very important to the government, it is an extremely small company.⁷⁵ Overall, the industry at the time seemed to believe the combination would be good for the technology involved, and for the industry as a whole (see McLaughlin 2006; Rothman 2006; Vaas 2005). The US is also “Israel’s largest trading partner,” and that trade is far from insignificant, totaling \$29.9 billion in 2005 (Jones 2006; Migdalovitz 2007). This can partly be attributed to the US–Israeli free-trade agreement (Migdalovitz 2007, 21). Thus, it would not have made a huge amount of sense for the government to block the deal on economic nationalist grounds, and there seems to be no evidence available to show that this was a motivation behind its unbounded intervention.

Presence of Interest Groups

Finally, the control variable of interest group presence did not seem to provide a motivation for government intervention in this case, either. No evidence can be found of interest groups lobbying against the deal (outside of the government agencies themselves), and the only lobbying that does seem to have occurred was in favor of the deal. Though “Check Point had committed to an all out effort to lobby the committee for approval,” its efforts were reportedly unsuccessful (Lemos 2006). In fact, the most powerful interest group in the US, the Israel lobby, would have been in favor of the deal. No reason can be found for the labor pool involved in the deal to protest either, as Check Point announced to the press that it “w[ould] be adding SourceFire’s 140 employees to its own staff of 1400 and expect[ed] no layoffs” (Vaas 2005). Thus, in addition to the lack of evidence that this particular variable motivated government intervention, it is also highly unlikely that it would have done so.

Competition Concerns

Nor is there evidence available to show that competition concerns played any role in motivating government intervention in this case. The US concern with its competitive role in the international marketplace has already been explained in the CNOOC case, and is unlikely to have played any role here. Furthermore, there is definitive proof that anti-trust competition concerns did not affect this transaction in a negative way.

Check Point was “granted early termination” of the competition waiting period that is part of the Hart–Scott–Rodino process by both the FTC and the DOJ’s Antitrust Division in November 2005 (Federal Register 2005), long before CFIUS even started its forty-five-day investigation.

Conclusions on Check Point/Sourcefire

Thus, we must conclude that it was national security concerns, motivated by specific geopolitical concerns, which were the root cause of unbounded government intervention in this case. It is rare for geopolitical concerns to be the primary motivating factor within the context of a security community relationship, and this case is critical because it demonstrates how and why this can occur. The US was worried not only about maintaining access to the Snort intrusion protection software created by Sourcefire (which was “open source”), but also over other Sourcefire systems used by the government (which were “not open source”), which would have been wholly owned by a foreign company if the transaction had been successful (Brockmeier 2006). Indeed, the US concerns over the deal seem to be legitimate given Israel’s fairly lax approach to export controls of sensitive technology in the past. Thus, it can be concluded that the primary (and sole) motivating factor behind government intervention in this case was geostrategic concern.

Case 4: Macquarie/PCCW

The Story

On June 19, 2006, PCCW Ltd. (based in Hong Kong) confirmed that a consortium led by Macquarie Bank (of Australia) had made a preliminary offer for its core media and telephone assets for an estimated \$5.15 billion (International Herald Tribune 2006a; Mitchell 2006; Zephyr 2006c).⁷⁶ The potential transaction came under fire almost immediately, as the Chinese state-owned China Netcom⁷⁷ raised major objections to the sale. At the time, China Netcom was the second-largest shareholder of PCCW, with a 20% stake in the company, as well as a “shareholder’s agreement” that gave it control over any future sale of the company beyond a certain threshold (Fellman & Ong 2006).⁷⁸ The state-run company claimed on June 21 that it was not “willing to see any major changes to the asset structure of PCCW” (Fellman & Ong 2006), and it was reported only two days later to have “objected to any sale of PCCW’s assets on the basis that the company is and should remain ‘owned and managed by Hong Kong people’” (Lau & Mitchell 2006b).

China Netcom made it clear it would not approve of the sale to such a foreign consortium,⁷⁹ an action that had, at the very least, the tacit approval of the Chinese government. By June 27, it was reported that “China Netcom, the State-owned Assets Supervision and Administration Commission, and the Ministry of Information submitted reports to China’s State Council about the bids for PCCW and are awaiting instruction” (Kwong 2006). Such actions made it apparent that the state-run shareholder would do what Beijing wished in the matter, and “most people involved in the PCCW saga think the Chinese government worked through China Netcom to scuttle the Macquarie and TPG Newbridge bids on nationalist grounds” (Dyer et al. 2006). The issue was greater than simply one of nationalism, however: the telecommunications sector is viewed as “a very strategic asset” in China, making the Chinese government “sensitiv[e] toward overseas ownership” in that industry (Chan & Fellman 2006).

Macquarie’s consortium tried to overcome China’s stark opposition by offering to incorporate China Netcom into the deal. By June 25, “Macquarie, seeking to make its bid acceptable to China, had offered China Network a 50% stake in a new Hong Kong phone company it planned to set up with the assets” purchased in the proposed deal (Mitchell 2006). Yet, this only seemed to cause more political problems, as the Hong Kong authorities were concerned it would only increase the “political and commercial clout” of Beijing in Hong Kong (Mitchell 2006). Similarly, it was argued that “China’s perceived sensitivity over the sale of Hong Kong assets to foreign parties raises questions about whether there are in fact unwritten limits to the territory’s economic and financial freedoms, which are guaranteed under its mini-constitution, the Basic Law” (Lau & Mitchell 2006a). This solution seemed unworkable not only for Beijing, but for Hong Kong as well.

Thus, it was not surprising when PCCW rejected approaches from both Macquarie and TPG on July 25. PCCW blamed the failure of the bids on China Netcom, because the company had, “in its capacity as a shareholder, . . . repeatedly indicated its opposition to such an asset sale” (Tucker & Mitchell 2006). By July 29, Rupert Murdoch told the press that China was “treating Macquarie as hostile invaders” (Lau 2006).⁸⁰ Indeed, the market widely accepts that the Chinese government would have blocked the Macquarie/PCCW deal if necessary, though this was in effect achieved through the objections of its company China Netcom.⁸¹ As the following exploration of the motivations behind this behavior show, this was again a case of geopolitical competition and economic nationalism leading to state intervention in a cross-border acquisition.

Geopolitical Competition

Though their relationship is not necessarily negative, China and Australia are not allies or members of the same security community. Certainly, Australia is not really perceived as a threat to China, though there are points of tension and disagreement on issues such as human rights, intellectual property, and the treatment of Taiwan (Australia DFAT 2007b). Indeed, China is considered a major, and rising, power, while Australia is not, and China is clearly more powerful than Australia in both military and economic terms. China's five-year average economic growth rate was 12.09% in 2006, while Australia's was 4.94%, and Australia's PPP GDP in 2006 was only 9.28% of China's.⁸² Similarly, China's five-year average growth rate of military expenditure was 12.35% in 2006, compared with Australia's 4.56% (SIPRI 2006). Considering that Australia's military expenditure was only about 27.87% that of China's at the time (SIPRI 2006), Australia had much greater concern for China's power than the other way around.

Furthermore, China's general level of dependence on energy imports was fairly low in 2006 at 0.14%, but there are some resource areas in which China recognizes the importance of its geopolitical relationship to Australia. First, China has signed two agreements with Australia on the transfer of nuclear material: the Australia–China Nuclear Material Transfer Agreement and the Nuclear Cooperation Agreement, which entered into force on February 3, 2006 (Australia DFAT 2007a). This is because China expected that it would soon be required to import uranium for the purposes of electrical generation in nuclear plants, as its own supply of nuclear energy is outstripped by demand (Australia DFAT 2007a). Australia's cooperation on this resource issue makes it seem more likely that China would wish to maintain a cordial economic relationship between the two countries.

Yet, China has also recently made it clear that it does not wish to become reliant on any individual country generally, or on Australia specifically, for natural resources. Only two years after the PCCW case, the Chinese government sought to block the acquisition of Rio Tinto by BHP Billiton, by purchasing enough shares of Rio Tinto in a “dawn raid” to achieve a 9% stake in the company, “mak[ing] it more difficult for BHP to buy Rio” (Bream et al. 2008). Though steel is a non-energy-related basic resource, it is vitally important to the running of any nation, especially one with a rapidly developing infrastructure and military. It was reported that “the Chinese government [was] dismayed at the prospect of a BHP takeover of Rio as it would give the combined company a virtual monopoly on iron ore supplies to China, which it

fears would lead to higher prices and damage the country's economic growth" (Bream et al. 2008). The "dawn raid" was "a joint exercise" between "Chinalco, a state-owned mining company" and "Alcoa, the US aluminum group," which "spent \$14bn in [the] move designed to block [the] planned \$119bn takeover bid from rival miner BHP Billiton" (Bream et al. 2008). As one market source, who spoke on the condition of anonymity, confirmed, the primary mover behind the intervention was the Chinese government, whose concern over its source of steel prompted it to willingly (and greatly) overpay for the stake in order to prevent the takeover.⁸³ Thus, China is obviously quite willing to block M&A that threaten its access to or control over certain key industries and resources.

Furthermore, China exhibits a tendency to view most nations as strategic competitors – especially in geo-economic terms – irrespective of the historical details of their bilateral relationship. Thus, it would be difficult to imagine a scenario in which China's actions to prevent a foreign takeover were not at least partially motivated by this larger geostrategic concern and the desire to protect its position of power within the international system. As examined next, China's outlook means that economic nationalism is tied in this case to geopolitical competition.

Economic Nationalism

China and Australia have a fairly good economic relationship. Both are members of APEC and the East Asia Summit (Australia DFAT 2008). A free-trade agreement also exists between the two countries, and bilateral trade is one of the foundations of the relationship and of continued dialogue between them (Australia DFAT 2007b).

Despite this, however, economic nationalism in China is on the rise, and it is clear that economic nationalism played some role in the government intervention in this case. It is true that at this time the level of national pride in China was not overwhelming, at 24.7% (WVS 2001–04), and that pro-globalization sentiment was just above the median value of fifty-four countries surveyed in 2006, and on a similar level to the attitudes toward globalization in the US that year (see IMD 2007b).⁸⁴ Yet, in China, an unusually high disconnect exists between these measurements – determined through questions asked of the general population – and the actual levels of nationalism or economic nationalist sentiment present in the Chinese government, which still runs a large portion of the state's economy. Barry Naughton argued in his 2007 testimony to the US–China ESRC that there had been "a clear increase in economic nationalism" in China in recent years (US–China ESRC

2007).⁸⁵ In fact, there was widespread concern over “rising economic nationalism in China” at this time, not only among analysts and academics, but also among “senior officials from a number of countries” – especially in relation to recent Chinese opposition to the proposed foreign takeovers of Chinese companies (XFN 2006b; see also XFN 2006a; Morgan 2006).

There has also been a history of significant support for national champions in China since the 1980s (US–China ESRC 2007). That was when China began to “experiment with industrial policies . . . designed to strengthen larger firms and grow ‘national champions’” (US–China ESRC 2007). While this policy weakened in the mid-1990s, experts agree that China seems to have resumed its support for national champions over “the past five years” (US–China ESRC 2007). Though the Chinese government never referred to PCCW as a “national champion” on record, the company held the majority of the telecommunications business in Hong Kong and was referred to as China Netcom’s “cash cow” (Schwankert 2006), making it – at the very least – an important asset for a national champion, namely China Netcom.

Significantly, the Chinese government formally banned foreign investment in the telecommunications industry, and thus in companies such as PCCW, just months after the Macquarie bid was blocked, indicating the degree of sentiment against foreign takeovers in China at the time, and the negative reactions to deals such as the one being investigated here. In September 2006, less than two months after the Macquarie/PCCW transaction failed, the new Provisions for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, regulating foreign takeovers in China, came into force. Article 12 of these Provisions establishes the right to review foreign M&A that would establish control over Chinese companies that are in a “major industry, ha[ve] or may have influence on state security, or . . . [involve a] domestic enterprise owning [a] famous trademark.”⁸⁶

In addition to the new Provisions on Acquisitions, two separate Chinese government bodies that have played a significant role in protectionist policies against foreign takeovers – the State Asset Supervision and Administration Commission (SASAC) and the National Development and Reform Commission (NDRC) – issued new directives around the time of the failed Macquarie/PCCW transaction. First, the Chairman of SASAC announced in December 2006 that the Chinese state would “retain absolute control over [seven] sectors that are important to state security and economy,” namely “telecommunications, . . . petroleum, . . . military-related industry, power and power networks, coal, civil aviation, and shipping,” though some limited foreign

investment would be allowed in some areas (Zheng 2007). This meant the Chinese government would maintain “more than 50% ownership stakes in the primary firms in those industries” (US–China ESRC 2007).⁸⁷ According to Naughton’s testimony, this law “merely re-affirms the status quo” (US–China ESRC 2007), demonstrating that it was always unlikely the Chinese government would have allowed Macquarie to take control of PCCW. Second, in February 2007, it was reported that the NDRC wanted to create a body called the Joint Review Commission for Foreign Investment Sectors, which would review foreign takeovers in a large number of Chinese sectors (AFX 2007).⁸⁸

It should also be noted here that by September 2011, the Chinese government had established a national “security review” for foreign takeovers, which – while loosely similar in form to the CFIUS process – retains a very different character. For example, the Chinese government Circular on the process states that the “content of [the] security review” will include not only “the effect of [the transaction] on the national security,” but also its “effect” on “national steady economic growth” and “basic social living order.”⁸⁹ (For a more detailed discussion of the Chinese FDI laws that have been introduced since this case, see Chapter 5).

Thus, it is clear that a high level of economic nationalism existed before, during, and after the failed Macquarie bid for PCCW: economic nationalism specifically targeted against foreign takeovers. It is also clear that telecommunications and media are particularly sensitive industries for the Chinese government when it comes to foreign takeovers for strategic reasons. The directives issued shortly after Macquarie’s bid illustrate the Chinese government’s desire to deter any such attempted takeovers in the future, and indicate its willingness to block those bids that are attempted. With all of this in mind, it is fairly obvious that economic nationalism – in addition to geopolitical concerns over their economic and military power – played a distinct role in motivating the Chinese to engage in unbounded intervention in this particular case.

Presence of Interest Groups

It is highly unlikely that interest group presence played a role in motivating intervention in this case. This is because the Chinese political system does not allow interest groups to flourish, and frequently crushes any such opposition to the will of the government. No interest groups were observed to be placing pressure on the government to block the deal at the time. Indeed, the only interest groups that seemed to appear

in relation to the case represented members of Macquarie's consortium, and they were, obviously, in favor of the deal. This variable, therefore, can be ruled out as a motivating factor in this case.

Competition Concerns

As will be recalled, one form of "competition" that might be connected to China's actions has to do with whether or not China is believed to be "competitive" in the international market as a state open to foreign investment and business. It is fairly clear that, in certain industries, such as the telecommunications industry examined here, China is not open to such investment insofar as large-scale takeovers are concerned. Yet, China has made a distinct effort to encourage such foreign investment in other sectors, and even to encourage alternative forms of FDI in sensitive sectors, whether through JVs or co-sponsored projects. This is why the subjective economic competitiveness rating for China in 2006 was 4.58, just below the mean rating for the countries examined in the database. Though it does seem clear, in this case, that government intervention was connected to one of those areas it had "closed" to such competition.

On the other hand, competition concerns, as they are traditionally understood, are unlikely to have played a role in motivating government intervention in this case. At the time, several laws existed in China "incorporating antitrust provisions and prohibitions on anti-competitive conduct," but these laws were largely "fragmented, confined in scope, and rarely enforced" (Ha & O'Brien 2008; see Huang & Richardson 2005).⁹⁰ For example, in relation to merger controls to address anti-trust competition concerns arising from cross-border M&A, the 2003 Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors prohibited foreign takeovers that "might lead to over-concentration, impair fair competition, or damage consumers' interests."⁹¹ But the Interim Provisions did "not specify any penalties . . . for non-compliance with the [law], and no follow-up activity appears to be taken in the vast majority of [cases]" (Ha & O'Brien 2008). Thus, China did not yet have a formal comprehensive anti-competition regime in place at the time of the failed Macquarie bid, of the type that was later adopted under the 2008 Anti-Monopoly Law (AML).⁹² Even had there been one, there is no evidence to suggest that the proposed transaction would have caused an unwelcome concentration within the telecommunications or media industries, as Macquarie is an investment bank and not a telecoms company.

Conclusions on Macquarie/PCCW

The Chinese government's effort to block the takeover of PCCW by the consortium led by Australia's Macquarie through the actions of its State-run company China Netcom was primarily motivated by geopolitical and economic nationalist concerns that were deeply interrelated. In China, it seems to be more difficult to separate these two variables from one another, as economic nationalism in the M&A sector plays such an unambiguous role in the State's efforts to increase or maintain its relative power, at the very same time that it is trying to open up other areas of its economy under World Trade Organization (WTO) rules in order to enhance its international standing. Indeed, this remains one of the areas in which China can protect itself from unwanted FDI, as the "sensitivity" of the sectors allows it to engage in such protectionism with some measure of impunity and without fear of retaliation. Indeed, Macquarie's failed bid did not seem to cause any tangible damage to the overall relationship between Australia and China, though it may have discouraged similar attempts at investment from being made in the near future.

Conclusion

The four cases of unbounded intervention examined in this chapter provide excellent supporting evidence for both the theory of non-military balancing and the conclusions reached in Chapter 2. In keeping with the fundamental argument of this book, each case demonstrates that government interventions were usually motivated by either geopolitical or economic nationalist concerns, with one or the other being the primary and/or secondary motivation in every case. In further support of the conclusions reached in Chapter 2, geopolitical concerns were also the *primary* reason for unbounded intervention in every case where the two states involved were not members of the same security community. This includes the CNOOC/Unocal and Macquarie/PCCW cases, though the nature of China's capitalist autocracy does make geopolitical concerns and economic nationalism more difficult to disentangle in the latter.

Interestingly, the Check Point/Sourcefire case illustrates that geopolitical concerns can, under certain conditions, also be the primary motivator behind unbounded intervention within the security community context if, for example, the acquiring state raises very specific, and hard to avoid, security concerns regarding the takeover in question. In the Check Point/Sourcefire case, for example, the issue was Israel's history of lax adherence to export control laws in combination with a target company with extremely sensitive technology used by US government agencies.

Figure 27 Motivation matrix: unbounded intervention

Case	Geopolitical Competition	Economic Nationalism
<i>Security Community Cases</i>		
PepsiCo/Danone	Secondary	Primary
Check Point/Sourcefire	Primary	
<i>Non-Security Community Cases</i>		
CNOOC/Unocal	Primary	Secondary
Macquarie/PCCW	Primary	Secondary

Not surprisingly, the only case in which economic nationalism provided the primary motivation behind unbounded intervention was the PepsiCo/Danone one. Yet, it is important to note that, even in this case, geopolitical tension was the secondary reason for the government's desire to block the transaction in question. This suggests that geopolitical competition is usually present in some form or another when a state chooses a strategy of unbounded intervention over, say, one of "bounded" intervention (a point that will be explored further in Chapter 5).

Furthermore, the control variable of "interest group presence" was found to play only a minor role, and the control variable of "competition concern" no role at all, in the government's action in the four cases explored in this chapter. Indeed, interest groups were only moderately effective in raising awareness in the CNOOC/Unocal case. It is significant, however, that the role of interest groups was simply to alert government actors to pre-existing concerns, and was not a primary or secondary *motivator* of intervention, per se.

In sum, the four cases examined here provide clear support for the primary hypothesis and its supporting assumptions. Figure 27 summarizes the motivations for unbounded intervention uncovered in each of these cases.

Finally, each of these cases supports the secondary hypothesis that the type of intervention employed by the state would be closely correlated to the deal outcome. In each case, governments engaged in unbounded intervention, and in each case, the deal was either completely or "effectively" blocked.

NOTES

- 1 For discussions of the costs associated with over- and underbalancing in reaction to a change or threatened change in relative power, see e.g., Schweller 1998, 2004; Wolforth 1993; and Waltz 1979, 172.

- 2 As discussed in Chapter 1, it is important to understand that many different government actors ultimately contribute to a state's final stance on a specified transaction, from bureaucrats and civil service members, to members of a congress or parliament, to executive branches and ultimately to heads of government. For a more detailed explanation of why, please refer to Chapter 1, note 33.
- 3 If the proposed bid were to be financed through debt rather than, or in addition to, cash or stock, then the debt already raised could be costly to maintain until the bidding process is over. There are also audience and opportunity costs associated with a lengthy bidding process that the acquiring company may wish to avoid if they become too onerous.
- 4 As mentioned in Chapter 1, legal sources confirm that in the US, CFIUS and/or its member organizations will indicate to a company whether or not it is likely to emerge successfully from a CFIUS review or investigation. This is one of the reasons that the number of withdrawals during the review/investigation process is exponentially higher than the number of presidential vetoes of a transaction (of which there were only four from 1988 to 2017). For further details on the number of withdrawals during the CFIUS review process, see Chapter 1, note 35.
- 5 Many countries do allow for either an administrative and/or a judicial review of their own government's decision to block an investment on national security grounds; indeed, the OECD Investment Division's report found that of the seventeen countries examined, the laws of ten allowed for an administrative review, and sixteen for judicial reviews (Wehrlé & Pohl 2016, 40–2). However, the report also notes that, in practice, such appeals processes are rarely used, both because formal vetoes themselves are rare, and because where foreign investors and governments do not find common ground during or before the investment screening process, the investors will usually either bow out or “submit a revised proposal aimed at accommodating the security concern” (Wehrlé & Pohl 2016, 40–1). In the US, there is no right to either administrative or judicial review of a President's *decision* to formally veto an investment on national security grounds (Wehrlé & Pohl 2016, 42), though following the 2014 US DC Circuit Court of Appeals case *Ralls v. CFIUS*, “judicial review of constitutionally-protected due process rights may be available” to foreign investors whose investments are vetoed by CFIUS (ABASAL 2015, 214); for further details on the Ralls case, see Introduction, note 16.
- 6 Two examples have been included in which the target is from the US because the home states of the acquiring companies in each instance had vastly different political relationships with the US. Both these cases also faced an unusual level of politicization, sparking a worldwide debate about this particular form of intervention and arguably changing the discourse surrounding it.
- 7 It could be argued that the rankings of these motivations were switched in one case (the attempted purchase of the German company MTU Aero Engines by the American firm Kohlberg Kravis Roberts & Company (KKR) in 2003), because of the extremely sensitive nature of the target company's product and concerns that such a sale could make state *B* more dependent on state *A* for military technology in the future.

- 8 There have been recent cases of governments recognizing that there could be a link between FDI in some large agricultural companies and national security, arguably because the foreign takeover of a big agricultural producer could – in theory – raise the specter of a foreign power seeking to disrupt a nation’s food supply or food security, as well as because of concerns raised in 2016 that industry consolidation through cross-border M&A could lead to an overall reduction in major agribusiness companies globally, with implications for the security and quality of supply. For example, in the US after 9/11, agriculture and food were included within the critical infrastructure to be protected by the Office of Homeland Security (see Moteff & Paromak 2004), and “on July 12, 2016 Senator Charles Grassley introduced S. 3161 to include the Secretary of Agriculture as a permanent member of the CFIUS and to include the national security impact of foreign investments on agricultural assets as part of the criteria the Committee uses in deciding to recommend that the President block a foreign acquisition” (Jackson 2016b, summary). CFIUS has also recently reviewed, but ultimately approved, a couple of foreign investments in this sector. For example, in 2013, the proposed takeover of the US company Smithfield Foods by the Chinese company Shuanghui International Holdings Ltd. was subjected to a full forty-five-day investigation following high levels of US domestic political opposition and concerns over food security, marking the first time the United States Department of Agriculture (USDA) was brought into the CFIUS process on an ad hoc basis, but was ultimately approved “without any conditions” (Carlson et al. 2014, 472). In 2016, CFIUS also reviewed the takeover of the Swiss agribusiness and seed biotech company Syngenta by the Chinese state-owned enterprise (SOE) ChemChina for national security risks, again bringing the USDA into the process, and again eventually approving the transaction (see e.g., Atkins & Weinland 2016).
- 9 It should also be noted that this case falls outside the technical parameters of the database, because its deal value was just below the \$500 million dollar threshold used. It is included here, however, because even though its deal value was just a little low, market and research analysts believed it would have a significant impact on the prospects for future cross-border consolidation of companies in that particular sector of high-tech software. This case is also one of the few examples of a company pulling out of the CFIUS and bidding processes after the initiation of a full forty-five-day investigation in which the parties involved have been publicly identified. Thus, while the parameters set for the database were necessarily restrictive in order to increase the level of comparability among cases and to ensure the validity of the statistical results found, not all critical cases fit neatly within them. It is thus equally important to ensure that such significant cases are examined qualitatively and not discarded from consideration.
- 10 This story initially leaked when the news service *Dow Jones* cited “an advance copy of the French publication *Challenges*” (Matthews 2005).
- 11 A “hostile” takeover is considered to be one “which goes against the wishes of the target company’s management and board of directors” (Investor Words 2008). The virulent tone of Jacques Chirac and Dominique de Villepin’s

- comments during the summer of 2005, however, suggests that they also considered “hostile” foreign takeovers to include those that have not been invited, or at least tacitly approved, by the government.
- 12 For the full text, see Article 30 of French Law No. 2004-1343 of December 9, 2004.
 - 13 For a discussion of France’s intent, see e.g., Carnegy et al. 2014; Shumpeter 2014.
 - 14 Specifically, the industries added in the 2014 decree were: “a) Electricity, gas, hydrocarbon or other energy supplies b) Water supplies c) Transport operators d) Electronic communications e) Installations of vital national interest f) Protection of public health” (Hepher 2014).
 - 15 This ratio of 62.60% for 2005 is consistent with the range of that same ratio from 2000 to 2004, which was between 60.96% (in 2001) and 63.38% (in 2000). Numbers used for these calculations were projected from past IEA data, sourced from IEA 2006. For the calculation used, see Chapter 2.
 - 16 These figures are reported in constant 2005 US dollars by SIPRI (2006).
 - 17 These numbers were calculated from data sourced from SIPRI (2006).
 - 18 The ratio of US to French GDP PPP was 6.82. The numbers used for this calculation were sourced from the World Bank’s World Development Indicators (WDI) database, reported in current international dollars (WDI 2008).
 - 19 Numbers calculated from data from the WDI database (WDI 2008).
 - 20 For further details on the timeline of French participation in NATO, see: www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/france-and-nato/.
 - 21 As with other European countries’ takeover laws, France now has different rules regarding the screening of investments from foreign investors of EU origin and those originating (ultimately) from outside the EU. In France, *all* foreign investments in *some* strategic sectors are reviewed. Narrower definitions of the remaining strategic sectors are then applied to EU-originating foreign investments than are applied for non-EU investors, in order to ensure compliance with “the case law of the European Court of Justice, which requires that measures restricting the free movement of capital within the European Union be narrowly-tailored to the protection of the public order or public safety” (Cafritz 2014, 2–6).
 - 22 As discussed earlier (see Introduction, pages 4–5), European states maintain the individual right to veto foreign takeovers on national security grounds under the provisions of the 2004 European Takeover Directive and the Treaty of the European Union. See the European Takeover Directive (DIRECTIVE 2004/25/EC) and Chapter 4, Articles 63 (ex Article 56 TEC) and 65 (ex Article 58 TEC) of the Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01).
 - 23 In 2006, the IMD World Competitiveness Yearbook covered sixty-one countries, but for this particular variable, survey data were available only for fifty-four (see IMD 2007b).
 - 24 It should be noted that “Villepin . . . was the first to coin the phrase ‘economic patriotism’” (Betts 2005). From the beginning, he strenuously “urged his

- compatriots to rally behind his concept of ‘economic patriotism’ to ensure they compete more effectively in a globalizing world” (Thornhill & Jones 2005). De Villepin declared: “I am absolutely convinced that France has exceptional assets and has nothing to fear from international competition. But our forces must be united, organized and mobilized so that we have the will to win together, business chiefs, social groups, the state and workers” (Thornhill & Jones 2005).
- 25 As one market analyst put it: “If I put myself in Pepsi’s shoes, do I want to invest \$30 billion in buying a company in France with President Chirac, the chairman, unions, and farmers hostile to the move? You’d be insane” (WSJ 2005a).
 - 26 At the beginning of the bidding process, many market analysts and observers agreed that a CNOOC/Unocal deal would make sense insofar as the two companies’ assets seemed to be a good fit for one another (see e.g., Chen 2005). There seemed to be a big difference between these analysts, who initially dismissed the national security concerns involved and focused on the financials of each bid, and policymakers, who emphasized them (International Oil Daily 2005b). This is not to say, however, that the market did not acknowledge early on that US policymakers would be wary of the deal. Not too long before the Unocal race, there was a scandal involving China Aviation Oil, which demonstrated the problems inherent in China’s lax financial reporting requirements. Despite this, the market still believed that CNOOC could win because of the premium its bid offered to shareholders (AFP 2005b).
 - 27 See Executive Order 12829. The American Bar Association (ABA) also provides one of the clearest explanations of the FOCI process (see Enix-Ross 2006).
 - 28 Both FOCI and Hart–Scott–Rodino reviews can last anywhere from one to six months (Grundman & Roncka 2006).
 - 29 For the text of the Byrd Amendment, see Section 837(a) of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484).
 - 30 Executive Order 13456 was issued on January 23, 2008. After a period of public comment and analysis within CFIUS itself of the amendment requirements, the US Department of the Treasury (DOT) issued its final regulations on how the law would be implemented in practice on November 14, 2008, officially called the Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons (see 73 FR 70702).
 - 31 It does this, for example, by requiring CFIUS to provide “guidance on the types of transactions that the Committee has reviewed and that have presented national security considerations,” and to provide an annual report to Congress with a comprehensive overview of their activities, in addition to briefings on individual cases when requested. For further details, see the Foreign Investment and National Security Act of 2007 (also known as Public Law 110–49, July 26, 2007).
 - 32 Under Exon–Florio, these government agencies included “the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs, . . . the Assistant to the President for

- Economic Policy, . . . the [DHS], . . . the Secretary of Treasury, . . . the Secretaries of State, Defense, and Commerce, the Attorney General, the Director of the Office of Management and Budget, the U.S. Trade Representative, and the Chairman of the Council of Economic Advisers” (US DOT 2007).
- 33 The issues addressed at the hearing included “Beijing’s currency-management practices [and whether they were] designed to give Chinese firms an unfair advantage over US companies in the world marketplace. Both Treasury Secretary John Snow and Fed Chairman Alan Greenspan . . . [testified]” (Gold et al. 2005).
- 34 For further details, see H.R. 3058 (US House 2005b).
- 35 As Amaewhule points out, the issue was all about timing, not only because CNOOC was facing “immense political pressure,” but also because Chevron (its competitor for Unocal) had managed to move forward by several weeks the date on which Unocal’s shareholders would vote on their bid for the company. This meant that CNOOC was left “with a mere five weeks to persuade Unocal’s shareholders of the merits of its proposal,” and even though the House legislation was “yet to take effect,” CNOOC would be left “with very little room to maneuver,” because even an early review could still take up to ninety days (Amaewhule 2005).
- 36 This statement had a deleterious effect on the situation. Congressman Pombo claimed it “only reinforce[d] the concerns expressed by the House last week. . . . If the Chinese are willing to tell the Congress of a free nation to get lost what assurance do we have that they wouldn’t tell the free market to butt out too? I think the answer is ‘no.’ An investigation . . . of this deal is clearly warranted” (Dow Jones 2005c). Steve Hadley, National Security Advisor to President Bush, was also quick to point out that such an investigation would have happened anyway, but the statement did serve to solidify opposition and anger in Congress, ensuring that it would use its power to block a CNOOC/Unocal deal if need be (Dow Jones 2005c).
- 37 A 2005 Pentagon report, which came out before CNOOC came forward with its bid for Unocal, concluded that: “over the long term, if current trends persist, [the] capabilities [of China’s Army] could pose a credible threat to other modern militaries operating in the region” (US DOD 2005, 4).
- 38 These numbers were calculated from data sourced from SIPRI (2006).
- 39 These numbers were calculated from the WDI database (WDI 2008) using GDP PPP in current international dollars. The GDP of China plus Macao and Hong Kong, divided by that of the US, equals 52.42%; without adding Macao and Hong Kong, it equals 50.32%.
- 40 Numbers calculated from the WDI database (WDI 2008).
- 41 Some economists, however, believed the push for revaluation was a grave mistake. Stiglitz and Lau, for example, argued in April of 2005 that “there is currently no credible evidence that the Renminbi is significantly undervalued, and an adjustment in its exchange rate at this time is neither warranted nor in the best interests of China or global economic stability” (Lau & Stiglitz 2005).
- 42 Numbers used for this calculation projected from past IEA data, sourced from the IEA (2006).

- 43 China is not among the top fifteen countries that import oil and petroleum to the US (EIA 2008a).
- 44 CNOOC's Chairman and Chief Executive, Fu Chengyu, said that his "company is driven purely by economics" and sought the acquisition for economic reasons, "not because the government asked us to do it" (McDonald 2005). He publicly stated that: "people need to understand that this is a purely commercial transaction driven by market forces" (AFX 2005a).
- 45 Kirchgaessner et al. (2005) point out that such investments needed to be approved by both the National Development and Reform Commission (NDRC) and the State Council.
- 46 The financial press was also keenly aware that this was part of CNOOC's motivation at the time. The *Financial Times*, for example, warned that: "CNOOC does not need this deal. But China . . . does. Unocal's . . . reserves would go a long way to meeting China's fast-growing liquefied natural gas demand. Unocal's Caspian assets would also satisfy a long standing – previously thwarted – Chinese desire to expand in that region" (Lex 2005b).
- 47 For a discussion of "China Inc.'s" use of state funds to pursue acquisitions of resources, see Fishman 2005, 294.
- 48 Hua Yang, SVP and CFO of CNOOC Ltd., confirmed this in a conference call. For a full transcript of that call, see FD 2005. It was also widely reported that CNOOC was ready to divest those US assets upon a Unocal purchase and to keep "US jobs" in order to make the deal more palatable to the US government and public (Gold et al. 2005).
- 49 See FD 2005.
- 50 One of those three witnesses was Frank Gaffney, who at the time headed that Center for Security Policy, but whom had also worked in the Pentagon during the Reagan Administration. Gaffney and Taylor took their debate beyond the hearing, but the difference between their positions largely boiled down to the fact that Gaffney did not believe that the market always operates freely, while Taylor argued that it would (see Kudlow 2005).
- 51 For commentary on this belief, see Lex 2005a.
- 52 In the last wave of the World Values Survey before this case, 71.1% of respondents in the US claimed to be "very proud" of their nationality (WVS 2001–04). Yet, while 86.71% of US citizens claim to be proud of their nation's economic achievements, the US is not always identified with economic nationalism (ISSP 2003).
- 53 Haier eventually withdrew its bid for Maytag, not because of government intervention, but because a bidding war increased the price beyond its means (Goodman & White 2005).
- 54 In 2005, the IMD World Competitiveness Yearbook covered sixty-one countries, but for this particular variable survey data were available for only fifty-one (see IMD 2007b). Pro-globalization sentiment was valued at 6.34 in the US in 2005, just above the median value of 6.22 among countries surveyed that year (see IMD 2007b). However, levels of pro-globalization sentiment had declined each year since an earlier reported high in 2002 (at the value of 7.20); in other words, anti-globalization sentiment in the US had risen slightly by 2005 relative to previous values (see IMD 2007b).

- 55 For further discussion of this case, see H.R. 3616 § 3601 (US House 1998); Iosco County Republicans 1999; and Walton 2008.
- 56 In a fit of frustration at the implication that the congressman had been “bought” by Chevron, his spokesman went on to state: “If you want the Chinese Government to own an American company, please do not contribute to the Congressman Joe Barton Committee, PO Box 1444, Ennis, Texas, 75120. Send your contributions to Communist Party General Secretary Hu Jintao, instead. If the Chinese government manages to buy Unocal, you’re going to end up sending your money to Beijing anyway” (Pierce & Newmeyer 2005).
- 57 On whether or not such a deal would “deliver an oil weapon into China’s hands,” Taylor’s response was “hell no” (AFX 2005c).
- 58 John Snow reiterated this position on July 9; see Bullock & Xiao 2005a.
- 59 This lawsuit did not gain any real traction, and as it was “not escalated to a class action lawsuit by all Unocal shareholders, the risks to the Unocal/Chevron deal remain[ed] minimal” (Amaewhule 2005). For full details of these two lawsuits, see Taylor 2005.
- 60 This included the attorneys general of California and Texas; see Oil Daily 2005b.
- 61 The US-based company Cisco Systems bought Sourcefire in 2013. For more information, see www.cisco.com.
- 62 At the time, Check Point was “best known for its firewall technology that defends networks against Internet attacks” (Lemos 2006).
- 63 The CFO of Check Point, Eyal Desheh, later said of the CFIUS process that “it’s a dialogue with the government” (FD 2006).
- 64 The Chairman and CEO of Check Point, Gil Shwed, confirmed the company was “finding specific issues” in “dealing with the government,” though he declared that he was unable to “share” what they were (FD 2006).
- 65 For example, see comments by Peter Cooper of Morgan Stanley in Dagoni 2006 and discussion in Lemos 2006 and Roberts 2006.
- 66 According to Weisman and Schmidt (2006), the DOD, DOJ, and DHS all displayed concern prior to the DPW/P&O case.
- 67 For, “although Israel is frequently referred to as an ally of the United States, the two countries do not have a mutual defence agreement” (Migdalovitz 2007, 23).
- 68 Some would argue that this position is also ensured by the high degree of political influence wielded by the Israel lobby within Washington; see Mearsheimer & Walt 2007.
- 69 A 2007 CRS report on Israel provides details of the particular sales that caused heightened tensions between the two countries and “angered the [DOD]” (Migdalovitz 2007, 25).
- 70 This observation was made in the context of discussing the difficulties Check Point was encountering in its attempt to purchase Sourcefire; Rothman (2006) argued that such protective actions were “not restricted to the United States. UK regulatory entities now have an issue with US company SafeNet buying nCipher, a UK encryption vendor.”

- 71 These numbers have been calculated from data sourced from the IEA (2006).
- 72 For the US, it was 4.93% in 2005 and 4.96% in 2006, while Israel's was 4.40 and 4.98%, respectively. Numbers calculated from data from the WDI database (WDI 2008).
- 73 The US five-year average military growth rate increased from 8.19% in 2005 to 8.98% in 2006, while Israel's decreased from 5.96 to 3.79% during that same time period. Additionally, Israel's military expenditure was only 2.48% of that of the US in 2005, and 2.15% in 2006. These numbers were calculated from data sourced from SIPRI (2006).
- 74 In 2005 and 2006, the IMD World Competitiveness Yearbook covered sixty-one countries, but for this particular variable survey data were available for only fifty-one in 2005 and fifty-four in 2006 (see IMD 2007b). In the US, pro-globalization sentiment was valued at 6.34 in 2005 and 6.25 in 2006, above the median values (of 6.22 in 2005 and 6.21 in 2006) among countries surveyed in those years (IMD 2007b). Thus, though levels of pro-globalization sentiment had declined each year since a reported high in 2002 (at the value of 7.20), they remained within the average range (IMD 2007b), and economic nationalism was generally still considered to be low in the US relative to other countries.
- 75 Sourcefire only had 140 employees at the time of the failed transaction (Messmer 2006).
- 76 The announcement was apparently made "unilaterally" by PCCW "to spark a bidding war"; this tack seemed successful, as private equity group "TPG Newbridge entered the fray a day later" (Mitchell 2006), and by June 29 there was "interest" in the deal from Rupert Murdoch's News Corp., which reportedly contemplated joining Macquarie's consortium (Zephyr 2006c).
- 77 The China Network Communications Group Corporation is usually referred to as China Netcom or China Network.
- 78 This "shareholder's agreement" held that "PCCW needs China Netcom's permission to sell a stake of 25 percent or more in PCCW-HKT Telephone Ltd., the phone services unit, or a stake of 10 percent or more in PCCW Media Ltd., the pay television unit" (Fellman & Ong 2006).
- 79 An analyst from the Hong Kong based Atlantis Investment Management, Lui Yang, confirmed "[China Netcom was] really angry about this, as you can see from the fact they said something publicly" (Fellman & Ong 2006).
- 80 Murdoch reportedly argued that Macquarie "had been encouraged . . . by a middle-level Chinese official . . . But higher authorities appeared to take a different view on the transaction and did not want to see [Hong Kong]'s biggest fixed-line company . . . fall into foreign hands" (Lau 2006).
- 81 For discussion of this emerging consensus, see e.g., Dyer et al. 2006; Fellman 2006; Fellman & Ong 2006; Lau 2006; Lau & Mitchell 2006a; Tucker & Mitchell 2006.
- 82 Australia's GDP was just 8.93% of China's if you include Hong Kong and Macao in the figures. Numbers calculated from the WDI database (WDI 2008).
- 83 This information was passed on in a personal interview by a member of the financial industry, who wished to remain anonymous (Interview 2008b).

- 84 In 2006, the IMD World Competitiveness Yearbook covered sixty-one countries, but for this particular variable, survey data were available for only fifty-four (see IMD 2007b). In mainland China, pro-globalization sentiment was valued at 6.67, just above the median value (6.21) for that year, and not far off the US score of 6.25 (IMD 2007b). It should be noted that pro-globalization sentiment in Hong Kong itself was far higher, at 8.87: the highest in the survey at the time (IMD 2007b). However, the value for mainland China was used in this case, as it was ultimately the mainland Chinese government that de facto had the ultimate ability to veto investment in this case.
- 85 According to Naughton: “In the past five years, the Hu Jintao-Wen Jiabao Administration has resuscitated a broad array of industrial policies . . . that, taken together, represent a clear increase in economic nationalism” (US-China ESRC 2007).
- 86 For an English translation of the 2006 Provisions, see english.mofcom.gov.cn/aarticle/policyrelease/domesticpolicy/200610/20061003434565.html.
- 87 Furthermore, in the same month, China’s State Administration of Radio, Film, and Television clarified that its policy at the time was “to temporarily not approve the creation of new joint companies” with foreign investors, instead limiting foreign investors’ “activities to one-off co-operation projects” with Chinese media companies (Dickie 2006). This reinforces the idea that the PCCW deal was unlikely from the start, and that the Chinese government wanted to reaffirm its control over the media sector.
- 88 It was reported that the Commission would be given the authority to review deals in the following industries: “the military and national defense, power grid and power generation, oil and petrochemicals, telecommunications, coal, civil aviation, water transportation, banking and finance, steel and other metals, auto, heavy machinery and equipment, and electronics” (AFX 2007).
- 89 This definition of security review coverage comes from the Circular of the General Office of the State Council on the Establishment of Security Review System Regarding Merger and Acquisition of Domestic Enterprises by Foreign Investors (issued February 3, 2011). See also the Provisions of the Ministry of Commerce for the Implementation of the Security Review System for Merger and Acquisition of Domestic Enterprises by Foreign Investors (found in the Ministry of Commerce’s No. 53 Announcement on August 25, 2011, and which took effect on September 1, 2011). English translations are available from MOFCOM at www.fdi.gov.cn/1800000121_39_0_1_6.html.
- 90 According to Ha and O’Brien (2008), these laws included the 1997 Pricing Law and the 1993 Anti-Unfair Competition Law, among others.
- 91 For an English translation of the 2003 Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, see www.fdi.gov.cn/1800000121_39_1921_0_7.html.
- 92 There was a comprehensive *draft* Anti-Monopoly Law at the time of this case, but the actual Anti-Monopoly Law did not go into effect until August 1, 2008 (Managing Intellectual Property 2007). For a discussion of the 2008 AML, see Chapter 5.