At ports, security vs. trade

Rules on ports have existed since 1789, but the debate sharpens as globalization rubs up against the threat of terror.

By Alexandra Marks | *Staff writer of The Christian Science Monitor*

NEW YORK – Americans have always been slightly suspicious of foreign investment, even as they've depended on large flows of foreign capital to fuel their economy.

That tension is undergirding the current political firestorm over the sale of some port management operations to a Dubai company in the United Arab Emirates. Some members of Congress are now considering legislation that would ensure American ports will always be controlled by American-owned companies - even though the majority of port operations are already managed by foreign companies.

In an effort to give the White House more time to meet with congressional leaders, the Dubai company has now agreed to delay taking control of the US ports. But even with some pressure eased, a spirited debate is likely to continue.

One reason is that the debate involves two key, and at times competing, issues for 21st-century America: the threat of terrorism and the fast pace of economic globalization. In this age of terrorism, some security analysts argue, the United States must reassess its economic requirements in light of the need for increased safeguards. But with globalization already well under way, many economists argue, any effort to restrict foreign ownership of ports could ultimately be damaging to the US economy - and wouldn't necessarily increase security.

Restrictions on US ports have a long history, going back to 1789. Then, the first so-called "cabotage" laws were enacted that forbid foreign companies from controlling shipbuilding and other American maritime commerce. The goal was to ensure the US would always have control of the resources it needed to protect itself.

With World War I a fresh memory, the US Congress expanded such prohibitions against foreign ownership to other crucial infrastructures - from the airlines to oil pipelines to the emerging radio waves.

But today, as technology has fueled changes at an ever greater pace, many economists contend that such "cabotage" laws are outmoded and anachronistic. And they point out that many restrictions passed in the 1920s have been relaxed - even though they still exist.

"When the dust settles, people are going to say some of these are pretty silly proposals when some of the biggest port facilities are already owned by foreigners, including the Chinese," says Edward M. Graham, a senior fellow at the Institute for International Economics in Washington and author of "US National Security and Foreign Direct Investment." "[Foreign ownership of port operations] has never proven to be a problem - the time to have banned it was 30 years ago before this became a highly globalized industry."

But security analysts come to the debate with a different set of concerns. One of the fundamental tenets of security is that to reduce risk to any system, one has to reduce the access given to any potential threats, says Andrew Thomas, a professor of international business and an aviation security analyst at the University of Akron in Ohio. While an outright ban on foreign ownership of port facility operations would be going too far, he says, the US must put into place "a proven process" to ensure that as many potential threats are screened out as possible.

"We have to take a step back and take a long look at this," says Professor Thomas. "This is the crowd that hasn't done much right on homeland security. It couldn't get Katrina right. Airport screening has been a fiasco. So when you have [Department of Homeland Security Secretary] Michael Chertoff saying, 'Trust me on this,' that's unnerving to me."

Both Thomas and Mr. Graham agree that security and stability are vital to keeping capital flowing around the world and that US ports are part of the nation's crucial infrastructure. Graham says that instead of restricting foreign ownership, the Department of Homeland Security should be stepping in.

"This would be a great time for the Department of Homeland Security to say, 'We have the following list of specific measures that we're going to take to make all US ports more secure,' " he says.

A DHS spokesman did not return several calls asking for comment. But at a hearing last week of the Senate Armed Services Committee, high-level Coast Guard and Customs officials outlined DHS's current strategy for ensuring port security, which includes prioritizing containers according to perceived risk, as well as the efforts under way to expand the screening of the highest perceived risks. But they acknowledged that only about 5 percent of containers are currently screened for radiological and other threats.

Other experts in foreign investment also believe the onus for increasing port security should fall on DHS. The current economic and national security review structure, already mandated by the Committee on Foreign Investment in the United States (CFIUS), creates sufficient safeguards to protect national security when it's utilized properly, they say. CFIUS was created in 1988, as concerns about Japanese investment in the US rose when Mitsubishi purchased the Rockefeller Center in New York. Since then, the interagency group, led by the Treasury Department, reviews and has the potential to block foreign acquisitions of US assets if they are deemed to have the potential to harm national security.

The Dubai World Ports acquisition of the British-owned Peninsular and Oriental Steam Navigation Co. (P&O) went through the CFIUS process. But some lawmakers remain skeptical, in part because an investigation by the Government Accountability Office in the fall found that the Treasury Department under President Bush uses "too narrow a definition" of national security when it undertakes a CFIUS review.

"There's been a high level of ineptness in this on the part of the administration, and they've conceded that," says Graham. "Congress needs to be informed and should have been informed, but they weren't."

Graham and others also caution against overreacting to the controversy in a way that could end up harming long-term US diplomatic, security, and economic interests.

"The current CFIUS process was designed to deal with this on a case-by-case basis because outright prohibitions would not be good for the US," says Nancy McLernon, senior vice president of the Organization for International Investment, which represents US operations of foreign companies. "If an American company had acquired P&O, there wouldn't be any security review at all. Let's remember that just because it's a US-owned company doesn't mean there are no security concerns with them at all."