

By Zhao Qian

Chinese experts voiced their concerns earlier this month when US politicians recommended new legislation to restrict investment by Chinese companies in the US telecommunications sector. But an experienced US trade lawyer has pointed out that the bill was only proposed by a few lawmakers and has not yet been passed. He suggested that if it becomes law, it should be a broader bill, not just aimed at Chinese companies.

Six US lawmakers sent a letter to President Barack Obama earlier this month, asking the administration to “develop a permanent legislative solution” to stop Chinese enterprises, such as telecom giant Huawei Technologies Co, from winning contracts to build broadband networks in the US.

Edward L. Rubinoff focuses on international trade controls and advises and represents both foreign and domestic companies regarding national security reviews conducted by the Committee on Foreign Investment in the United States (CFIUS) under the Exon-Florio law. He is a partner at Akin Gump Strauss Hauer & Feld, an international law firm based in Washington, and has dealt with Sino-US trade and investment cases for nearly 15 years.

Rubinoff represented Bain Capital, Huawei's partner when it tried to invest in 3Com in 2007, and is familiar with the recent CFIUS decision to recommend blocking an investment by Huawei in US tech company 3Leaf Systems. He said that Chinese companies have improved their management skills gradually and encouraged more Chinese companies to invest in the US, despite this recent objection. He spoke to the Global Times (GT) in his firm's Beijing office.

GT: What is your role as a lawyer specializing in US international trade controls? Whom do you represent – the US or the foreign companies?

Rubinoff: The US Government maintains many different trade control laws governing exports of technologies, importing commodities, and investment into the US. We are hired to assist the companies that have to comply with these laws. Akin Gump not only represents Chinese companies that want to export to – or invest in – the US, but vice versa.

GT: Have you seen any changes by the Chinese companies that used to encounter obstacles when investing overseas?

Rubinoff: There have been a few well-publicized examples of failed bids in the past, such as CNOOC's attempted acquisition of Unocal in 2005 and the attempt by Huawei to invest jointly with Bain Capital in 3Com in 2007. Looking back at these cases, I think the biggest problem was that Chinese companies and their American partners failed to fully understand and plan for the CFIUS national securities laws and process. They didn't anticipate the issues and review processes before negotiations.

Now I think Chinese companies are beginning to understand that these is-

► Will the US try to block Chinese investment?

Great wall of America



sues should be part of their strategic plan. They are thinking strategically about what type of business sector they should invest in, whether to make a minority or majority investment, or a complete acquisition, or whether they should aim to become a limited partner with a more passive investment. But these are all issues that Chinese companies have to understand even better, and also to prepare better before they go to the US government.

GT: But what about the recent Huawei case, and the reaction of US lawmakers – was it fair?

Rubinoff: Every government has legitimate concerns about the national security impact of foreign investment in

their nation's telecommunications infrastructure. So there are some very complex issues that must be reviewed in these cases. Unfortunately, neither the CFIUS nor any other

country's national security review panel reports the specific reasons for its decisions, so we don't know what specific concerns the CFIUS had about the Huawei transaction.

The new bill, which has just been proposed by a few lawmakers, is not yet law. And it has a long way to go before it becomes law and it will most likely face a lot of challenges. There will be questions about whether it is necessary as there are existing laws providing for review of foreign investment in the US telecom sector, by the CFIUS and by the Federal Communications Commission, so why do we need more? Therefore,

this is just a bill, and may ultimately not be passed into law.

Even if it is passed into law, it probably will not just target Huawei or China's investment in the US. To be legal, it would have to apply broadly to all foreign investment.

Although it faced problems with the one investment recently reviewed by the CFIUS, Huawei has had some great success in the US. For example, there

was an announcement last week that Huawei has made the final round in its bid for the contract with US Cellular to provide fourth generation (4G) systems for the US wireless

network. It may yet get that contract, you never know.

GT: Do you think some other Chinese companies who wish to invest in the US might feel frustrated or might fear unfair treatment because of the Huawei case?

Rubinoff: I totally understand Chinese companies' reactions to this decision and it may seem that the US is opposed to all Chinese investment. Unfortunately, it's usually the stories about blocked investments that get publicity. There have been many successful Chinese investments in the US. I think Chinese companies need to understand that there is no broad barrier to Chinese investments, which are still generally welcomed in the US. But Chinese companies need to be very targeted and transparent regarding their investments in order to be successful.



Huawei's new mobile phone, OPhone 2.0.
Photo: CFP