

REFORM OF NATIONAL SECURITY REVIEWS OF FOREIGN  
DIRECT INVESTMENTS ACT

—————  
JULY 17, 2006.—Ordered to be printed  
—————

Mr. BARTON of Texas, from the Committee on Energy and  
Commerce, submitted the following

R E P O R T

[To accompany H.R. 5337]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5337) to ensure national security while promoting foreign investment and the creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment .....	2
Purpose and Summary .....	8
Background and Need for Legislation .....	9
Hearings .....	10
Committee Consideration .....	10
Committee Votes .....	10
Committee Oversight Findings .....	12
Statement of General Performance Goals and Objectives .....	12
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	12
Committee Cost Estimate .....	12
Congressional Budget Office Estimate .....	12
Federal Mandates Statement .....	14
Advisory Committee Statement .....	14
Constitutional Authority Statement .....	14
Applicability to Legislative Branch .....	14
Section-by-Section Analysis of the Legislation .....	15
Changes in Existing Law Made by the Bill, as Reported .....	17

## AMENDMENT

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Reform of National Security Reviews of Foreign Direct Investments Act”.

**SEC. 2. UNITED STATES SECURITY IMPROVEMENT AMENDMENTS; CLARIFICATION OF REVIEW AND INVESTIGATION PROCESS.**

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by striking subsections (a) and (b) and inserting the following new subsections:

“(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

“(1) **COMMITTEE.**—The term ‘Committee’ means the Committee on Foreign Investment in the United States.

“(2) **CONTROL.**—The term ‘control’ has the meaning given to such term in regulations which the Committee shall prescribe.

“(3) **COVERED TRANSACTION.**—The term ‘covered transaction’ means any merger, acquisition, or takeover by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.

“(4) **FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.**—The term ‘foreign government-controlled transaction’ means any covered transaction that could result in the control of any person engaged in interstate commerce in the United States by a foreign government or an entity controlled by or acting on behalf of a foreign government.

“(b) **NATIONAL SECURITY REVIEWS AND INVESTIGATIONS.**—

“(1) **NATIONAL SECURITY REVIEWS.**—

“(A) **IN GENERAL.**—Upon receiving written notification under subparagraph (C) of any covered transaction, or on a motion made under subparagraph (D) with respect to any covered transaction, the President, acting through the Committee, shall review the covered transaction to determine whether the transaction threatens to impair the national security of the United States and whether such threat can be mitigated.

“(B) **CONTROL BY FOREIGN GOVERNMENT.**—If the Committee determines that the covered transaction is a foreign government-controlled transaction, the Committee shall conduct an investigation of the transaction under paragraph (2).

“(C) **WRITTEN NOTICE.**—

“(i) **IN GENERAL.**—Any party to any covered transaction may initiate a review of the transaction under this paragraph by submitting a written notice of the transaction to the Chairperson of the Committee.

“(ii) **WITHDRAWAL OF NOTICE.**—No covered transaction for which a notice was submitted under clause (i) may be withdrawn from review unless—

“(I) a written request for such withdrawal is submitted by any party to the transaction; and

“(II) the request is approved in writing by the Chairperson of the Committee.

“(D) **UNILATERAL INITIATION OF REVIEW.**—The President, the Committee, or any member of the Committee may move to initiate a review under subparagraph (A) of—

“(i) any covered transaction;

“(ii) any covered transaction that has previously been reviewed or investigated under this section, if any party to the transaction submitted false or misleading material information to the Committee in connection with the review or investigation or omitted material information, including material documents, from information submitted to the Committee; or

“(iii) any covered transaction that has previously been reviewed or investigated under this section, if any party to the transaction or the entity resulting from consummation of the transaction intentionally materially breaches a mitigation agreement or condition described in subsection (1)(1)(A), and—

“(I) such breach is certified by the lead department or agency monitoring and enforcing such agreement or condition as an intentional material breach; and

“(II) such department or agency certifies that there is no other remedy or enforcement tool available to address such breach.

“(E) TIMING.—Any review under this paragraph shall be completed before the end of the 30-day period beginning on the date of the receipt of written notice under subparagraph (C) by the Chairperson of the Committee, or the date of the initiation of the review in accordance with a motion under subparagraph (D).

“(2) NATIONAL SECURITY INVESTIGATIONS.—

“(A) IN GENERAL.—In each case in which—

“(i) a review of a covered transaction under paragraph (1) results in a determination that—

“(I) the transaction threatens to impair the national security of the United States and that threat has not been mitigated during or prior to the review of a covered transaction under paragraph (1); or

“(II) the transaction is a foreign government-controlled transaction; or

“(ii) the Director of National Intelligence identifies particularly complex national security or intelligence issues that could threaten to impair the national security of the United States and were not resolved during the initial review period under paragraph (1),

the President, acting through the Committee, shall immediately conduct an investigation of the effects of the transaction on the national security of the United States and take any necessary actions in connection with the transaction to protect the national security of the United States.

“(B) TIMING.—

“(i) IN GENERAL.—Any investigation under subparagraph (A) shall be completed before the end of the 45-day period beginning on the date of the investigation commenced.

“(ii) EXTENSIONS OF TIME.—The period established under subparagraph (B) for any investigation of a covered transaction may be extended with respect to any particular investigation by the President or by a rollcall vote of at least 2/3 of the members of the Committee involved in the investigation by the amount of time specified by the President or the Committee at the time of the extension, not to exceed 45 days, as necessary to collect and fully evaluate information relating to—

“(I) the covered transaction or parties to the transaction; and

“(II) any effect of the transaction that could threaten to impair the national security of the United States.

“(3) APPROVAL OF CHAIRPERSON REQUIRED.—

“(A) IN GENERAL.—A review or investigation under this subsection of a covered transaction shall not be treated as final or complete until the findings and the report resulting from such review or investigation are approved and signed by the Chairperson of the Committee after approval by a majority vote of the Committee.

“(B) ADDITIONAL ACTIONS REQUIRED IN CERTAIN CASES.—In the case of an investigation under paragraph (2) of any foreign government-controlled transaction, an investigation shall not be treated as final or complete until the findings and report resulting from such investigation—

“(i) are approved by a majority of the members of the Committee in a roll call vote; and

“(ii) in the case of any roll call vote pursuant to clause (i) in which there is at least 1 vote by a Committee member against approving a foreign government-controlled transaction, are signed by the President (in addition to the Chairperson and the Vice Chairperson of the Committee under subparagraph (A)).

“(4) ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.—

“(A) IN GENERAL.—The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States of any covered transaction, including an affirmative inquiry for information to the Director of the Office of Foreign Assets Control within the Department of the Treasury and the Director of the Financial Crimes Enforcement Network.

“(B) 30-DAY MINIMUM.—The analysis required under subparagraph (A) shall take no less than 30 days and be completed no less than 7 days before the end of the initial review period under paragraph (1), except in any instance described in paragraph (2)(A)(ii).

“(C) INDEPENDENT ROLE OF DIRECTOR.—The Director of National Intelligence shall not be a member of the Committee and shall serve no policy role with the Committee other than to provide analysis under subparagraph (A) in connection with a covered transaction.

“(5) RESUBMITTALS OF NOTICE AND REQUESTS FOR ADDITIONAL REVIEW OR INVESTIGATION.—

“(A) IN GENERAL.—No provision of this subsection shall be construed as prohibiting any party to a covered transaction from—

“(i) submitting additional information concerning the transaction, including any proposed restructuring of the transaction or any modifications to any agreements in connection with the transaction, while any review or investigation of the transaction is on-going; or

“(ii) requesting a review or investigation of the transaction after any previous review or investigation of the same or a similar transaction has become final if information material to the prior review or investigation and not previously submitted to the Committee becomes known or if any material change in circumstances to the covered transaction has occurred since the review or investigation.

“(B) APPROVAL OF REQUEST.—In the case of a request referred to in subparagraph (A)(ii), the Committee shall determine by consensus whether to grant a request.

“(6) REGULATIONS.—Regulations prescribed under this section shall include standard procedures for—

“(A) submitting any notice of a proposed or pending covered transaction to the Committee;

“(B) submitting a request to withdraw a proposed or pending covered transaction from review; and

“(C) resubmitting a notice of proposed or pending covered transaction that was previously withdrawn from review.”.

**SEC. 3. STATUTORY ESTABLISHMENT OF THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES.**

(a) IN GENERAL.—Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by striking subsection (k) and inserting the following new subsection:

“(k) COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES.—

“(1) ESTABLISHMENT.—The Committee on Foreign Investment in the United States established pursuant to Executive Order No. 11858 shall be a multi-agency committee to carry out this section and such other assignments as the President may designate.

“(2) MEMBERSHIP.—The Committee shall be comprised of the following members or the designee of any such member:

“(A) The Secretary of the Treasury.

“(B) The Secretary of Homeland Security.

“(C) The Secretary of Commerce.

“(D) The Secretary of Defense.

“(E) The Secretary of State.

“(F) The Attorney General.

“(G) The Secretary of Energy.

“(H) The Chairman of the Council of Economic Advisors.

“(I) The United States Trade Representative.

“(J) The Director of the Office of Management and Budget.

“(K) The Director of the National Economic Council.

“(L) The Director of the Office of Science and Technology Policy.

“(M) The President’s Assistant for National Security Affairs.

“(3) CHAIRPERSON.—The Secretary of Commerce shall be the Chairperson of the Committee.

“(4) OTHER MEMBERS.—Subject to subsection (b)(4)(B), the Chairperson of the Committee shall involve the heads of such other Federal departments, agencies, and independent establishments in any review or investigation under subsection (b) as the Chairperson determines to be appropriate on the basis of the facts and circumstances of the transaction under investigation (or the designee of any such department or agency head).

“(5) MEETINGS.—The Committee shall meet upon the direction of the President or upon the call of the Chairperson of the Committee without regard to section 552b of title 5, United States Code (if otherwise applicable).

“(6) COLLECTION OF EVIDENCE.—Subject to subsection (c), the Committee may, for the purpose of carrying out this section—

“(A) sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

“(B) require the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Chairperson of the Committee may determine advisable.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury for each of fiscal years 2007, 2008, 2009, and 2010, expressly and solely for the operations of the Committee that are conducted by the Secretary, the sum of \$10,000,000.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The first sentence of section 721(c) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(c)) is amended—

(1) by striking “material filed with” and inserting “material, including proprietary business information, filed with, or testimony presented to,”; and

(2) by striking “or documentary material” the 2nd place such term appears and inserting “, documentary material, or testimony”.

**SEC. 4. ADDITIONAL FACTORS REQUIRED TO BE CONSIDERED.**

Section 721(f) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(f)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking “may” and inserting “shall”; and

(B) by striking “among other factors”;

(2) by striking “and” at the end of paragraph (4);

(3) by striking the period at the end of paragraph (5) and inserting a semicolon; and

(4) by adding at the end the following new paragraphs:

“(6) whether the covered transaction has a security-related impact on critical infrastructure in the United States;

“(7) whether the covered transaction is a foreign government-controlled transaction; and

“(8) such other factors as the President or the President’s designee may determine to be appropriate, generally or in connection with a specific review or investigation.”.

**SEC. 5. NONWAIVER OF SOVEREIGN IMMUNITY.**

Section 721(d) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(d)) is amended by adding at the end the following new sentence: “The United States shall not be held liable for any losses or other expenses incurred by any party to a covered transaction as a result of actions taken under this section after a covered transaction has been consummated if the party did not submit a written notice of the transaction to the Chairperson of the Committee under subsection (b)(1)(C) or did not wait until the completion of any review or investigation under subsection (b), or the end of the 15-day period referred to in this subsection, before consummating the transaction.”.

**SEC. 6. MITIGATION, TRACKING, AND POST-CONSUMMATION MONITORING AND ENFORCEMENT.**

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by inserting after subsection (k) (as amended by section 3 of this Act) the following new subsection:

“(l) MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT.—

“(1) MITIGATION.—

“(A) IN GENERAL.—The Committee may negotiate, enter into or impose, and enforce any agreement or condition with any party to a covered transaction in order to mitigate any threat to the national security of the United States.

“(B) RISK-BASED ANALYSIS REQUIRED.—Any agreement entered into or condition imposed under subparagraph (A) shall be based on a risk-based analysis of the threat to national security of the covered transaction.

“(2) TRACKING AUTHORITY FOR WITHDRAWN NOTICES.—

“(A) IN GENERAL.—If any written notice of a covered transaction that was submitted to the Committee under this section is withdrawn before any review or investigation by the Committee under subsection (b) is completed, the Committee shall establish, as appropriate—

“(i) interim protections to address specific concerns with such transaction that have been raised in connection with any such review or investigation pending any resubmission of any written notice under this section with respect to such transaction and further action by the President under this section;

“(ii) specific timeframes for resubmitting any such written notice; and

“(iii) a process for tracking any actions that may be taken by any party to the transaction, in connection with the transaction, before the notice referred to in clause (ii) is resubmitted.

“(B) DESIGNATION OF AGENCY.—The Committee may designate an appropriate Federal department or agency, other than any entity of the intelligence community (as defined in the National Security Act of 1947), as the lead agency to carry out the requirements of subparagraph (A) with respect to any covered transaction that is subject to such subparagraph.

“(3) NEGOTIATION, MODIFICATION, MONITORING, AND ENFORCEMENT.—

“(A) DESIGNATION OF AGENCY.—The Committee shall designate a Federal department or agency as the lead agency to negotiate, modify, monitor, and enforce any agreement entered into or condition imposed under paragraph (1) with respect to a covered transaction based on the expertise with and knowledge of the issues related to such transaction on the part of the designated department or agency.

“(B) REPORTING BY DESIGNATED AGENCY.—

“(i) IMPLEMENTATION REPORTS.—The Federal department or agency designated by the Committee as a lead agency under subparagraph (A) in connection with any agreement entered into or condition imposed under paragraph (1) with respect to a covered transaction shall—

“(I) provide periodic reports to the Chairperson of the Committee on the implementation of such agreement or condition; and

“(II) require, as appropriate, any party to the covered transaction to report to the head of such department or agency (or the designee of such department or agency head) on the implementation or any material change in circumstances.

“(ii) MODIFICATION REPORTS.—The Federal department or agency designated by the Committee as a lead agency under subparagraph (A) in connection with any agreement entered into or condition imposed with respect to a covered transaction shall—

“(I) provide periodic reports to the Chairperson of the Committee on any modification to any such agreement or condition imposed with respect to the transaction; and

“(II) ensure that any significant modification to any such agreement or condition is reported to the Director of National Intelligence and to any other Federal department or agency that may have a material interest in such modification.”.

#### SEC. 7. INCREASED OVERSIGHT BY THE CONGRESS.

(a) REPORT ON ACTIONS.—Section 721(g) of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended to read as follows:

“(g) REPORTS TO THE CONGRESS.—

“(1) REPORTS ON COMPLETED COMMITTEE INVESTIGATIONS.—

“(A) IN GENERAL.—Not later than 5 days after the completion of a Committee investigation of a covered transaction under subsection (b)(2), or, if the President indicates an intent to take any action authorized under subsection (d) with respect to the transaction, after the end of 15-day period referred to in subsection (d), the Chairperson of the Committee shall submit a written report on the findings or actions of the Committee with respect to such investigation, the determination of whether or not to take action under subsection (d), an explanation of the findings under subsection (e), and the factors considered under subsection (f), with respect to such transaction, to—

“(i) the Majority Leader and the Minority Leader of the Senate;

“(ii) the Speaker and the Minority Leader of the House of Representatives; and

“(iii) the chairman and ranking member of each committee of the House of Representatives and the Senate with jurisdiction over any aspect of the covered transaction and its possible effects on national security, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives.

“(B) NOTICE AND BRIEFING REQUIREMENT.—If a written request for a briefing on a covered transaction is submitted to the Committee by any Senator or Member of Congress who receives a report on the transaction under subparagraph (A), the Chairperson (or such other person as the Chairperson may designate) shall provide 1 classified briefing to each House of the Congress from which any such briefing request originates in a secure facility of appropriate size and location that shall be open only to

the Majority Leader and the Minority Leader of the Senate, the Speaker and the Minority Leader of the House of Representatives, (as the case may be) the chairman and ranking member of each committee of the House of Representatives or the Senate (as the case may be) with jurisdiction over any aspect of the covered transaction and its possible effects on national security, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives, and appropriate staff members who have security clearance.

“(2) APPLICATION OF OTHER PROVISION.—

“(A) IN GENERAL.—The disclosure of information under this subsection shall be consistent with the requirements of subsection (c). Members of Congress and staff of either House or any committee of the Congress shall be subject to the same limitations on disclosure of information as are applicable under such subsection.

“(B) PROPRIETARY INFORMATION.—Proprietary information which can be associated with a particular party to a covered transaction shall be furnished in accordance with subparagraph (A) only to a committee of the Congress and only when the committee provides assurances of confidentiality, unless such party otherwise consents in writing to such disclosure.”

(b) SEMI-ANNUAL REPORT.—Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by inserting after subsection (l) (as added by section 6 of this Act) the following new subsection:

“(m) SEMI-ANNUAL REPORT TO THE CONGRESS.—

“(1) IN GENERAL.—The Chairperson of the Committee shall transmit a report to the chairman and ranking member of each committee of the House of Representatives and the Senate with jurisdiction over any aspect of the report, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives, before January 31 and July 31 of each year on all the reviews and investigations of covered transactions conducted under subsection (b) during the 6-month period covered by the report.

“(2) CONTENTS OF REPORT RELATING TO COVERED TRANSACTIONS.—The report under paragraph (1) shall contain the following information with respect to each covered transaction:

“(A) A list of all notices filed and all reviews or investigations conducted during the period with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about the status of the review or investigation, information on any withdrawal from the process, any rollcall votes by the Committee under this section, any extension of time for any investigation, and any presidential decision or action under this section.

“(B) Specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and presidential decisions or actions under this section.

“(C) Cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated.

“(D) Information on whether companies that withdrew notices to the Committee in accordance with subsection (b)(1)(C)(ii) have later re-filed such notices, or, alternatively, abandoned the transaction.

“(E) The types of security arrangements and conditions the Committee has used to mitigate national security concerns about a transaction.

“(F) A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next such report, to the extent possible.

“(3) CONTENTS OF REPORT RELATING TO CRITICAL TECHNOLOGIES.—

“(A) IN GENERAL.—In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall include in the semi-annual report submitted under paragraph (1) the following:

“(i) An evaluation of whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer.

“(ii) An evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments against private

United States companies aimed at obtaining commercial secrets related to critical technologies.

“(B) CRITICAL TECHNOLOGIES DEFINED.—For purposes of this paragraph, the term ‘critical technologies’ means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 or other critical technology, critical components, or critical technology items essential to national defense or national security identified pursuant to this section.

“(C) RELEASE OF UNCLASSIFIED STUDY.—That portion of the semi-annual report under paragraph (1) that is required by this paragraph may be classified. An unclassified version of that portion of the report shall be made available to the public.”.

(c) INVESTIGATION BY INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of the Treasury shall conduct an independent investigation to determine all of the facts and circumstances concerning each failure of the Department of the Treasury to make any report to the Congress that was required under section 721(k) of the Defense Production Act of 1950 (as in effect before the date of the enactment of this Act).

(2) REPORT TO THE CONGRESS.—Before the end of the 270-day period beginning on the date of the enactment of this Act, the Inspector General of the Department of the Treasury shall submit a report to the chairman and ranking member of each committee of the House of Representatives and the Senate with jurisdiction over any aspect of the report, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives, on the investigation under paragraph (1) containing the findings and conclusions of the Inspector General.

**SEC. 8. CERTIFICATION OF NOTICES AND ASSURANCES.**

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by inserting after subsection (m) (as added by section 7(b) of this Act) the following new subsection:

“(n) CERTIFICATION OF NOTICES AND ASSURANCES.—Each notice required to be submitted to the President or the President’s designee under this section and regulations prescribed under such section, and each report required pursuant to paragraph (3)(B)(ii) of subsection (1) with respect to the implementation of any mitigation agreement or condition described in paragraph (1)(A) of such subsection or any material change in circumstances shall be accompanied by a written statement by the chief executive officer or the designee of the person required to submit such notice or report certifying that, to the best of the person’s knowledge and belief—

“(1) the notice or report submitted fully complies with the requirements of this section or such regulation, agreement, or condition; and

“(2) the information so contained is accurate and complete in all material respects.”.

**SEC. 9. REGULATIONS.**

Section 721(h) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(h)) is amended to read as follows:

“(h) REGULATIONS.—The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.”.

**SEC. 10. EFFECT ON OTHER LAW.**

Section 721(i) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(i)) is amended to read as follows:

“(i) EFFECT ON OTHER LAW.—No provision of this section shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.”.

PURPOSE AND SUMMARY

The purpose of H.R. 5337 is to strengthen the process for reviewing foreign investment transactions in U.S. companies, clarify the role of the Committee on Foreign Investment in the United States



(CFIUS) and its membership, and improve transparency in the process. H.R. 5337 establishes CFIUS and its membership as a standing inter-agency Committee chaired by the Secretary of Commerce and sets forth requirements for reviews and investigations and the timing thereof. H.R. 5337 provides criteria and requirements for reviews and automatic investigations of foreign government controlled transactions as well as covered transactions. Additionally, H.R. 5337 sets forth reporting requirements for CFIUS on its activities to Congressional leadership and the Congressional Committees of jurisdiction.

#### BACKGROUND AND NEED FOR LEGISLATION

The Committee on Foreign Investment in the United States is an inter-agency committee originally formed by an executive order in 1975. It was established to monitor and evaluate the impact of foreign investment in the United States. In 1988, Congress amended Section 721 of the Defense Production Act of 1950 in the Omnibus Trade and Competitiveness Act of 1988 (Section 721 is also known as the "Exon-Florio" provision). This Amendment was developed and marked up in the Committee on Energy and Commerce. The amended statute provides authority to the President to suspend or prohibit any foreign acquisition, merger or takeover of a U.S. corporation that is determined to threaten the national security of the United States. In 1988, the President delegated his responsibilities to CFIUS by executive order.

The Exon-Florio provision provides the President authority to block a transaction 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 do not provide adequate and appropriate authority to protect national security. Exon-Florio requires a foreign entity to provide notice to CFIUS upon a planned acquisition, merger, or takeover of a U.S. corporation. Such notification is confidential but does not preclude disclosure to Congress. CFIUS then reviews the proposed transaction. In cases where more extensive review is required, an "investigation" is conducted that must not exceed 45 days in length and must commence within 30 days of initial receipt of notification.

Exon-Florio does not define national security, but does set forth factors to be considered in the review process as they affect national security. Generally, the factors involve the ability of the U.S. to meet national defense and security requirements as well as protect national security. Treasury Department Officials have indicated each CFIUS member is expected to apply that definition of national security that is consistent with the representative agency's specific legislative mandate during an Exon-Florio review or investigation.

In 1993, Congress again amended the Exon-Florio provision in the National Defense Authorization Act of 1993 (Byrd Amendment). The Byrd Amendment requires CFIUS review transactions where an acquirer is owned or controlled by a foreign government and the transaction could affect national security. The Speaker appointed Energy and Commerce Committee Members as conferees on the Senate bill.

CFIUS by tradition is chaired by the Secretary of Treasury and its membership includes the Secretaries of State, Defense, and

Commerce, the Attorney General, the Director of the Office of Management and Budget, the U.S. Trade Representative, the Chairman of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy. Additionally, the Secretary of Homeland Security was added in 2003.

Early in 2006, the proposed Dubai Ports World transaction to acquire certain U.S. port facility operations was met with concern when the transaction was not subject of an investigation by CFIUS. As the company was tied to the government, many observers believed the law under the “Byrd” amendment required an investigation. Adding to the problem, there was no unanimity on what the existing statute required and concern that the law did not provide adequate disclosure to Congress. Given these concerns, the Committee recognizes the need for legislation to clarify and update CFIUS and the process of review as well as transparency for Congressional oversight.

#### HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on H.R. 5337 on July 11, 2006. The Subcommittee received testimony from: John Castellani, President, Business Roundtable; Calman J. Cohen, President, Emergency Committee on American Trade; Douglass Holtz-Eakin, Director, Maurice R. Greenberg Center for Geoeconomic Studies, Council on Foreign Relations; and The Honorable Patrick Mulloy, Commissioner, United States-China Economic and Security Review Commission.

#### COMMITTEE CONSIDERATION

On Wednesday, July 12, 2006, the Full Committee met in open markup session and ordered H.R. 5337 favorably reported to the House, amended, by a voice vote, a quorum being present.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following is the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to order H.R. 5337 reported to the House, amended, was agreed to by voice vote.

**COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS  
ROLL CALL VOTE # 128**

**Bill:** H.R. 5337, Reform of National Security Reviews of Foreign Direct Investments Act.

**AMENDMENT:** An amendment by Mr. Markey, No. 2, to (1) extend the maximum allotted time for transaction review from 30 to 60 days and for security investigations from 45 to 90 days, and (2) expand the criteria for automatic national security investigations to include whether it would affect critical infrastructure of the U.S., defined as those systems and assets so vital to the United States that their destruction or incapacity would have a debilitating effect on security, national economic security, public health and safety, or any combination thereof, including airports, seaports, and mass transit

**DISPOSITION:** NOT AGREED TO, by a roll call vote of 16 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood		X		Mr. Rush			
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering				Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt		X		Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle			
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson	X			Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 5337 is to strengthen the process for review of foreign investment in the United States. The Committee on Foreign Investment in the United States shall adopt such regulations set forth in the Act and commence filing reports and notices to the Congressional Committees of jurisdiction as required.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5337, the Reform of National Security Reviews of Foreign Direct Investments Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JULY 14, 2006.

Hon. JOE BARTON,  
*Chairman, Committee on Energy and Commerce*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5337, the Reform of National Security Reviews of Foreign Direct Investments Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DONALD B. MARRON,  
*Acting Director.*

Enclosure.

*H.R. 5337—Reform of National Security Reviews of Foreign Direct Investments Act*

H.R. 5337 would amend the Defense Production Act of 1950 to establish in law the Committee on Foreign Investment in the United States (CFIUS). The committee would consist of 13 members (including seven cabinet secretaries). In addition, the legislation would authorize the appropriation of \$10 million annually over the 2007–2010 period for the Secretary of the Treasury to pay for

activities of the committee that are conducted by the Department of the Treasury.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 5337 would cost the Treasury Department \$40 million over the 2007–2011 period. In addition, CBO expects that complying with the bill’s provisions would increase the administrative expenses of other federal agencies involved with CFIUS by at least a few million dollars per year. But because of the confidential nature of the CFIUS review process, the number of agencies involved, and the confidential information needed to prepare an estimate for some provisions of the legislation, CBO cannot determine a precise estimate of the likely total costs of this bill. Enacting the bill would not affect direct spending or revenues.

H.R. 5337 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

**Estimated cost to the Federal Government:** The estimated budgetary impact of H.R. 5337 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level <sup>1</sup> .....	10	10	10	10	0
Estimated Outlays .....	9	10	10	10	1

<sup>1</sup> In addition, CBO expects that complying with the bill’s provisions would increase the administrative expenses of some federal agencies, but because of the confidential nature of the CFIUS review process, the number of agencies involved, and the confidential information needed to prepare an estimate for some provisions of the legislation, CBO cannot determine a precise estimate of the likely total costs of this bill.

**Basis of estimate:** For this estimate, CBO assumes that H.R. 5337 will be enacted by the end of fiscal year 2006. We assume that the authorized amounts will be appropriated for each year and that outlays will occur at historical rates for similar activities.

H.R. 5337 would establish in law the CFIUS to coordinate the government’s review of proposed foreign investments in the United States that might affect national security. Currently, the committee consists of 12 members (including six cabinet secretaries). Under an executive order, the committee now has 30 days to evaluate the national security implications of foreign investment in the United States. Under the bill, the committee would consist of 13 members; the Secretaries of the Departments of the Treasury, State, Defense, Commerce, Energy, and Homeland Security; the Attorney General; the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisers; the United States Trade Representative; the Director of the National Economic Council; the Director of the Office of Science and Technology Policy; and the President’s Assistant for National Security Affairs. The legislation would formalize and expand the review and investigation process.

The bill would authorize the appropriation of \$10 million annually over the 2007–2010 period for the operations of the committee. Assuming the appropriation of the authorized amounts, CBO estimates that the provision would cost \$40 million over the 2007–2011 period.

In addition, CBO expects that complying with the bill's provisions would increase the administrative expenses of federal agencies that are represented on the committee, but because of the confidential nature of the CFIUS review process, the number of agencies involved, and the confidential information needed to prepare an estimate for some provisions of the legislation, CBO cannot determine a precise estimate of the likely total costs of this bill. Additional costs over the 2007–2011 period would generally come from agencies' salary and expense budgets, which are subject to annual appropriation. Such costs would probably total at least a few million dollars per year.

**Intergovernmental and private-sector impact:** H.R. 5337 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

**Previous CBO estimate:** On June 16, 2006, CBO transmitted a cost estimate for H.R. 5337, as ordered reported by the House Committee on Financial Services on June 14, 2006. On May 3, 2006, CBO transmitted a cost estimate for S. 3549, the Foreign Investment and National Security Act of 2006, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 30, 2006. Those bills also dealt with CFIUS but have some different provisions, including those involving the composition and leadership of the committee. Both versions of H.R. 5337 would authorize the appropriation of \$10 million annually over the 2007–2010 period while S. 3549 would not authorize a specific amount to be appropriated.

**Estimate prepared by:** Federal Costs: Matthew Pickford; Impact on state, local, and tribal governments: Sarah Puro; Impact on the private sector: Fatimot Ladipo.

**Estimate approved by:** Robert A. Sunshine, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

Section 1 establishes the short title of the bill as the “National Security Foreign Investment Reform and Strengthening Transparency Act of 2006.”

##### *Section 2. United States security improvement amendments; Clarification of review and investigation process*

Section 2 amends Section 721 of the Defense Production Act of 1950 to reform and clarify the way acquisitions of United States companies by foreign companies are analyzed for their effect on national security.

Subsection (a) provides definitions for certain terms used in the bill: Committee, control, covered transaction, and foreign government-controlled transaction.

Subsection (b) establishes the method by which covered transactions are reviewed and investigated by the Committee on Foreign Investment in the United States to determine if they threaten to impair United States national security.

An investigation must be conducted for: (1) any covered transaction that is reviewed and determined threatens to impair the national security of the U.S. and the threat has not been mitigated during or prior to the review; (2) a transaction involving a foreign government-controlled company; and (3) a transaction for which the Director of National Intelligence establishes the process for notifying CFIUS of a proposed transaction and a procedure for treating transactions that are withdrawn from the CFIUS process and later re-submits notice. Section 2 establishes a procedure for the President to unilaterally initiate a review of a transaction in the case of submission of false or misleading information to CFIUS or intentional material breach of mitigation agreements; makes clear that national security reviews of transactions take no longer than 30 days and, if necessary, investigations that follow reviews take no longer than 45 days unless two-thirds of the members of CFIUS vote to extend, and then by no longer than 45 days; describes reasons for a transaction to undergo an investigation; establishes that no review or investigation is complete until the chairman obtains a majority vote of the Committee; requires that any investigation must be approved by a majority of CFIUS members in a roll call vote; specifies that in the case of a dissenting vote by any CFIUS member, the decision on a foreign government-controlled transaction must be made by the President; and specifies that the Director of National Intelligence must conduct an analysis of each transaction.

##### *Section 3. Statutory establishment of the Committee on Foreign Investment in the United States*

Section 3 formally establishes the Committee on Foreign Investment in the United States. In addition, this section (1) establishes the membership; (2) specifies that the Secretary of the Commerce shall be the chairman; (3) allows the temporary addition of non-

member Executive Branch agencies; (4) establishes guidelines for meeting and gathering information; and (5) authorizes the appropriation of \$10 million annually for the operation of the Committee.

*Section 4. Additional factors required to be considered*

Section 4 establishes that the list of factors in Section 721 that currently “may” be considered when reviewing or investigating any transaction, instead “must” all be considered, and adds as new factors whether a transaction is a foreign government-controlled transaction and whether a transaction has a security-related impact on critical infrastructure in the United States.

*Section 5. Nonwaiver of sovereign immunity*

Section 5 makes clear that while submitting notice to CFIUS remains voluntary, if the United States must take action to dissolve, suspend or modify a transaction, the U.S. is not liable for any losses or other expenses by any party to a completed transaction if a notice of such transaction was not filed with the CFIUS prior to completion of the transaction.

*Section 6. Mitigation, tracking, and post-consummation monitoring and enforcement*

Section 6 establishes that the CFIUS may enter into agreements with parties to a transaction to mitigate any threats to national security. In addition, this section establishes that the CFIUS shall name an appropriate lead Federal agency to monitor compliance with such agreements, negotiate any changes in such agreements, and report back to the CFIUS on compliance and modifications. Section 6 also establishes a method of tracking transactions that are withdrawn from the review or investigation process as well as a process for setting interim protections on such transactions to address specific national security concerns.

*Section 7. Increased oversight by the Congress*

Section 7 establishes a broad new system for reporting information on CFIUS activities to Congress so that it may conduct appropriate oversight of the CFIUS. This includes (1) reports to Congress within 5 days after the final action in an investigation; (2) a mechanism for Congress to request a detailed, classified briefing on a transaction; and (3) affirmative protections for proprietary business information. The CFIUS is required to file semi-annual reports with Congressional Committees of jurisdiction (including the Energy and Commerce Committee, Financial Services Committee, and the Committee on International Relations) that contain information on transactions handled by the CFIUS, cumulative and trend analysis of transactions by business sector and country of origin, information on security and mitigation agreements, folds into the semi-annual reporting the contents of the previously required quadrennial reporting on foreign industrial espionage in the U.S. and on foreign attempts to control a particular U.S. business or industrial sector, and requires a report on investments in the U.S. by countries that do not ban foreign terrorist organizations and by countries that support the boycott of Israel. The quadrennial report is repealed as redundant.



*Section 8. Certification of notices and assurances*

Section 8 makes clear that parties to a transaction must certify that the information they file with CFIUS is complete and correct.

*Section 9. Regulations*

Section 9 directs the President to cause regulations to be issued to carry out the requirements of Section 721, and specifies that to the extent possible they minimize paperwork burden and coordinate new reporting requirements with existing ones.

*Section 10. Effect of other law*

Section 10 clarifies that no portion of the bill should be construed as affecting or altering other existing law or regulation.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 721 OF THE DEFENSE PRODUCTION ACT OF 1950**

## AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

SEC. 721. [(a) INVESTIGATIONS.—The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

[(b) MANDATORY INVESTIGATIONS.—The President or the President's designee shall make an investigation, as described in subsection (a), in any instance in which an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover which could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States. Such investigation shall—

[(1) commence not later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover, as prescribed by regulations promulgated pursuant to this section; and

[(2) shall be completed not later than 45 days after its commencement.]

(a) *DEFINITIONS.*—For purposes of this section, the following definitions shall apply:

(1) *COMMITTEE.*—The term “Committee” means the Committee on Foreign Investment in the United States.

(2) *CONTROL.*—The term “control” has the meaning given to such term in regulations which the Committee shall prescribe.

(3) *COVERED TRANSACTION.*—The term “covered transaction” means any merger, acquisition, or takeover by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.

(4) *FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.*—The term “foreign government-controlled transaction” means any covered transaction that could result in the control of any person engaged in interstate commerce in the United States by a foreign government or an entity controlled by or acting on behalf of a foreign government.

(b) *NATIONAL SECURITY REVIEWS AND INVESTIGATIONS.*—

(1) *NATIONAL SECURITY REVIEWS.*—

(A) *IN GENERAL.*—Upon receiving written notification under subparagraph (C) of any covered transaction, or on a motion made under subparagraph (D) with respect to any covered transaction, the President, acting through the Committee, shall review the covered transaction to determine whether the transaction threatens to impair the national security of the United States and whether such threat can be mitigated.

(B) *CONTROL BY FOREIGN GOVERNMENT.*—If the Committee determines that the covered transaction is a foreign government-controlled transaction, the Committee shall conduct an investigation of the transaction under paragraph (2).

(C) *WRITTEN NOTICE.*—

(i) *IN GENERAL.*—Any party to any covered transaction may initiate a review of the transaction under this paragraph by submitting a written notice of the transaction to the Chairperson of the Committee.

(ii) *WITHDRAWAL OF NOTICE.*—No covered transaction for which a notice was submitted under clause (i) may be withdrawn from review unless—

(I) a written request for such withdrawal is submitted by any party to the transaction; and

(II) the request is approved in writing by the Chairperson of the Committee.

(D) *UNILATERAL INITIATION OF REVIEW.*—The President, the Committee, or any member of the Committee may move to initiate a review under subparagraph (A) of—

(i) any covered transaction;

(ii) any covered transaction that has previously been reviewed or investigated under this section, if any party to the transaction submitted false or misleading material information to the Committee in connection with the review or investigation or omitted material information, including material documents, from information submitted to the Committee; or

(iii) any covered transaction that has previously been reviewed or investigated under this section, if any party to the transaction or the entity resulting from consummation of the transaction intentionally materially breaches a mitigation agreement or condition described in subsection (l)(1)(A), and—

(I) such breach is certified by the lead department or agency monitoring and enforcing such agreement or condition as an intentional material breach; and

(II) such department or agency certifies that there is no other remedy or enforcement tool available to address such breach.

(E) *TIMING.*—Any review under this paragraph shall be completed before the end of the 30-day period beginning on the date of the receipt of written notice under subparagraph (C) by the Chairperson of the Committee, or the date of the initiation of the review in accordance with a motion under subparagraph (D).

(2) *NATIONAL SECURITY INVESTIGATIONS.*—

(A) *IN GENERAL.*—In each case in which—

(i) a review of a covered transaction under paragraph (1) results in a determination that—

(I) the transaction threatens to impair the national security of the United States and that threat has not been mitigated during or prior to the review of a covered transaction under paragraph (1); or

(II) the transaction is a foreign government-controlled transaction; or

(ii) the Director of National Intelligence identifies particularly complex national security or intelligence issues that could threaten to impair the national security of the United States and were not resolved during the initial review period under paragraph (1),

the President, acting through the Committee, shall immediately conduct an investigation of the effects of the transaction on the national security of the United States and take any necessary actions in connection with the transaction to protect the national security of the United States.

(B) *TIMING.*—

(i) *IN GENERAL.*—Any investigation under subparagraph (A) shall be completed before the end of the 45-day period beginning on the date of the investigation commenced.

(ii) *EXTENSIONS OF TIME.*—The period established under subparagraph (B) for any investigation of a covered transaction may be extended with respect to any particular investigation by the President or by a roll-call vote of at least 2/3 of the members of the Committee involved in the investigation by the amount of time specified by the President or the Committee at the time of the extension, not to exceed 45 days, as necessary to collect and fully evaluate information relating to—

(I) the covered transaction or parties to the transaction; and

(II) any effect of the transaction that could threaten to impair the national security of the United States.

(3) APPROVAL OF CHAIRPERSON REQUIRED.—

(A) IN GENERAL.—A review or investigation under this subsection of a covered transaction shall not be treated as final or complete until the findings and the report resulting from such review or investigation are approved and signed by the Chairperson of the Committee after approval by a majority vote of the Committee.

(B) ADDITIONAL ACTIONS REQUIRED IN CERTAIN CASES.—In the case of an investigation under paragraph (2) of any foreign government-controlled transaction, an investigation shall not be treated as final or complete until the findings and report resulting from such investigation—

(i) are approved by a majority of the members of the Committee in a roll call vote; and

(ii) in the case of any roll call vote pursuant to clause (i) in which there is at least 1 vote by a Committee member against approving a foreign government-controlled transaction, are signed by the President (in addition to the Chairperson and the Vice Chairperson of the Committee under subparagraph (A)).

(4) ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.—

(A) IN GENERAL.—The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States of any covered transaction, including an affirmative inquiry for information to the Director of the Office of Foreign Assets Control within the Department of the Treasury and the Director of the Financial Crimes Enforcement Network.

(B) 30-DAY MINIMUM.—The analysis required under subparagraph (A) shall take no less than 30 days and be completed no less than 7 days before the end of the initial review period under paragraph (1), except in any instance described in paragraph (2)(A)(ii).

(C) INDEPENDENT ROLE OF DIRECTOR.—The Director of National Intelligence shall not be a member of the Committee and shall serve no policy role with the Committee other than to provide analysis under subparagraph (A) in connection with a covered transaction.

(5) RESUBMITTALS OF NOTICE AND REQUESTS FOR ADDITIONAL REVIEW OR INVESTIGATION.—

(A) IN GENERAL.—No provision of this subsection shall be construed as prohibiting any party to a covered transaction from—

(i) submitting additional information concerning the transaction, including any proposed restructuring of the transaction or any modifications to any agreements in connection with the transaction, while any review or investigation of the transaction is on-going; or

(ii) requesting a review or investigation of the transaction after any previous review or investigation of the

*same or a similar transaction has become final if information material to the prior review or investigation and not previously submitted to the Committee becomes known or if any material change in circumstances to the covered transaction has occurred since the review or investigation.*

(B) *APPROVAL OF REQUEST.*—*In the case of a request referred to in subparagraph (A)(ii), the Committee shall determine by consensus whether to grant a request.*

(6) *REGULATIONS.*—*Regulations prescribed under this section shall include standard procedures for—*

(A) *submitting any notice of a proposed or pending covered transaction to the Committee;*

(B) *submitting a request to withdraw a proposed or pending covered transaction from review; and*

(C) *resubmitting a notice of proposed or pending covered transaction that was previously withdrawn from review.*

(c) *CONFIDENTIALITY OF INFORMATION.*—*Any information or documentary [material filed with] material, including proprietary business information, filed with, or testimony presented to, the President or the President’s designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information [or documentary material], documentary material, or testimony may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.*

(d) *ACTION BY THE PRESIDENT.*—*Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section. *The United States shall not be held liable for any losses or other expenses incurred by any party to a covered transaction as a result of actions taken under this section after a covered transaction has been consummated if the party did not submit a written notice of the transaction to the Chairperson of the Committee under subsection (b)(1)(C) or did not wait until the completion of any review or investigation under subsection (b), or the end of the 15-day period referred to in this subsection, before consummating the transaction.**

\* \* \* \* \*

(f) *FACTORS TO BE CONSIDERED.*—*For purposes of this section, the President or the President’s designee [may] shall, taking into account the requirements of national security, consider [among other factors]—*

(1) \* \* \*

\* \* \* \* \*

(4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

(A) \* \* \*

(B) listed under section 309(c) of the Nuclear Non-Proliferation Act of 1978 on the “Nuclear Non-Proliferation-Special Country List” (15 C.F.R. Part 778, Supplement No. 4) or any successor list; **and**

(5) the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security**【.】**;

(6) *whether the covered transaction has a security-related impact on critical infrastructure in the United States;*

(7) *whether the covered transaction is a foreign government-controlled transaction; and*

(8) *such other factors as the President or the President’s designee may determine to be appropriate, generally or in connection with a specific review or investigation.*

**【(g) REPORT TO THE CONGRESS.—**The President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the President’s determination of whether or not to take action under subsection (d), including a detailed explanation of the findings made under subsection (e) and the factors considered under subsection (f). Such report shall be consistent with the requirements of subsection (c) of this Act.

**【(h) REGULATIONS.—**The President direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

**【(i) EFFECT ON OTHER LAW.—**Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.**】**

*(g) REPORTS TO THE CONGRESS.—*

*(1) REPORTS ON COMPLETED COMMITTEE INVESTIGATIONS.—*

*(A) IN GENERAL.—Not later than 5 days after the completion of a Committee investigation of a covered transaction under subsection (b)(2), or, if the President indicates an intent to take any action authorized under subsection (d) with respect to the transaction, after the end of 15-day period referred to in subsection (d), the Chairperson of the Committee shall submit a written report on the findings or actions of the Committee with respect to such investigation, the determination of whether or not to take action under subsection (d), an explanation of the findings under subsection (e), and the factors considered under subsection (f), with respect to such transaction, to—*

*(i) the Majority Leader and the Minority Leader of the Senate;*

*(ii) the Speaker and the Minority Leader of the House of Representatives; and*

(iii) the chairman and ranking member of each committee of the House of Representatives and the Senate with jurisdiction over any aspect of the covered transaction and its possible effects on national security, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives.

(B) NOTICE AND BRIEFING REQUIREMENT.—If a written request for a briefing on a covered transaction is submitted to the Committee by any Senator or Member of Congress who receives a report on the transaction under subparagraph (A), the Chairperson (or such other person as the Chairperson may designate) shall provide 1 classified briefing to each House of the Congress from which any such briefing request originates in a secure facility of appropriate size and location that shall be open only to the Majority Leader and the Minority Leader of the Senate, the Speaker and the Minority Leader of the House of Representatives, (as the case may be) the chairman and ranking member of each committee of the House of Representatives or the Senate (as the case may be) with jurisdiction over any aspect of the covered transaction and its possible effects on national security, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives, and appropriate staff members who have security clearance.

(2) APPLICATION OF OTHER PROVISION.—

(A) IN GENERAL.—The disclosure of information under this subsection shall be consistent with the requirements of subsection (c). Members of Congress and staff of either House or any committee of the Congress shall be subject to the same limitations on disclosure of information as are applicable under such subsection.

(B) PROPRIETARY INFORMATION.—Proprietary information which can be associated with a particular party to a covered transaction shall be furnished in accordance with subparagraph (A) only to a committee of the Congress and only when the committee provides assurances of confidentiality, unless such party otherwise consents in writing to such disclosure.

(h) REGULATIONS.—The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

(i) EFFECT ON OTHER LAW.—No provision of this section shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

\* \* \* \* \*

[(k) QUADRENNIAL REPORT.—

[(1) IN GENERAL.—In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall complete and furnish to the Congress, not later than 1 year after the date of enactment of this section and upon the expiration of every 4 years thereafter, a report which—

[(A) evaluates whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

[(B) evaluates whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

[(2) DEFINITION.—For the purposes of this subsection, the term “critical technologies” means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 or other critical technology, critical components, or critical technology items essential to national defense identified pursuant to this section.

[(3) RELEASE OF UNCLASSIFIED STUDY.—The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.]

(k) COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES.—

(1) ESTABLISHMENT.—*The Committee on Foreign Investment in the United States established pursuant to Executive Order No. 11858 shall be a multi-agency committee to carry out this section and such other assignments as the President may designate.*

(2) MEMBERSHIP.—*The Committee shall be comprised of the following members or the designee of any such member:*

(A) *The Secretary of the Treasury.*

(B) *The Secretary of Homeland Security.*

(C) *The Secretary of Commerce.*

(D) *The Secretary of Defense.*

(E) *The Secretary of State.*

(F) *The Attorney General.*

(G) *The Secretary of Energy.*

(H) *The Chairman of the Council of Economic Advisors.*

(I) *The United States Trade Representative.*

(J) *The Director of the Office of Management and Budget.*

(K) *The Director of the National Economic Council.*

(L) *The Director of the Office of Science and Technology Policy.*

(M) *The President’s Assistant for National Security Affairs.*

(3) CHAIRPERSON.—*The Secretary of Commerce shall be the Chairperson of the Committee.*

(4) OTHER MEMBERS.—*Subject to subsection (b)(4)(B), the Chairperson of the Committee shall involve the heads of such other Federal departments, agencies, and independent estab-*



ishments in any review or investigation under subsection (b) as the Chairperson determines to be appropriate on the basis of the facts and circumstances of the transaction under investigation (or the designee of any such department or agency head).

(5) MEETINGS.—The Committee shall meet upon the direction of the President or upon the call of the Chairperson of the Committee without regard to section 552b of title 5, United States Code (if otherwise applicable).

(6) COLLECTION OF EVIDENCE.—Subject to subsection (c), the Committee may, for the purpose of carrying out this section—

(A) sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Chairperson of the Committee may determine advisable.

(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury for each of fiscal years 2007, 2008, 2009, and 2010, expressly and solely for the operations of the Committee that are conducted by the Secretary, the sum of \$10,000,000.

(I) MITIGATION, TRACKING, AND POSTCONSUMMATION MONITORING AND ENFORCEMENT.—

(1) MITIGATION.—

(A) IN GENERAL.—The Committee may negotiate, enter into or impose, and enforce any agreement or condition with any party to a covered transaction in order to mitigate any threat to the national security of the United States.

(B) RISK-BASED ANALYSIS REQUIRED.—Any agreement entered into or condition imposed under subparagraph (A) shall be based on a risk-based analysis of the threat to national security of the covered transaction.

(2) TRACKING AUTHORITY FOR WITHDRAWN NOTICES.—

(A) IN GENERAL.—If any written notice of a covered transaction that was submitted to the Committee under this section is withdrawn before any review or investigation by the Committee under subsection (b) is completed, the Committee shall establish, as appropriate—

(i) interim protections to address specific concerns with such transaction that have been raised in connection with any such review or investigation pending any resubmission of any written notice under this section with respect to such transaction and further action by the President under this section;

(ii) specific timeframes for resubmitting any such written notice; and

(iii) a process for tracking any actions that may be taken by any party to the transaction, in connection with the transaction, before the notice referred to in clause (ii) is resubmitted.

(B) DESIGNATION OF AGENCY.—The Committee may designate an appropriate Federal department or agency, other than any entity of the intelligence community (as defined in the National Security Act of 1947), as the lead agency to carry out the requirements of subparagraph (A) with re-

spect to any covered transaction that is subject to such subparagraph.

(3) *NEGOTIATION, MODIFICATION, MONITORING, AND ENFORCEMENT.*—

(A) *DESIGNATION OF AGENCY.*—*The Committee shall designate a Federal department or agency as the lead agency to negotiate, modify, monitor, and enforce any agreement entered into or condition imposed under paragraph (1) with respect to a covered transaction based on the expertise with and knowledge of the issues related to such transaction on the part of the designated department or agency.*

(B) *REPORTING BY DESIGNATED AGENCY.*—

(i) *IMPLEMENTATION REPORTS.*—*The Federal department or agency designated by the Committee as a lead agency under subparagraph (A) in connection with any agreement entered into or condition imposed under paragraph (1) with respect to a covered transaction shall—*

(I) *provide periodic reports to the Chairperson of the Committee on the implementation of such agreement or condition; and*

(II) *require, as appropriate, any party to the covered transaction to report to the head of such department or agency (or the designee of such department or agency head) on the implementation or any material change in circumstances.*

(ii) *MODIFICATION REPORTS.*—*The Federal department or agency designated by the Committee as a lead agency under subparagraph (A) in connection with any agreement entered into or condition imposed with respect to a covered transaction shall—*

(I) *provide periodic reports to the Chairperson of the Committee on any modification to any such agreement or condition imposed with respect to the transaction; and*

(II) *ensure that any significant modification to any such agreement or condition is reported to the Director of National Intelligence and to any other Federal department or agency that may have a material interest in such modification.*

(m) *SEMI-ANNUAL REPORT TO THE CONGRESS.*—

(1) *IN GENERAL.*—*The Chairperson of the Committee shall transmit a report to the chairman and ranking member of each committee of the House of Representatives and the Senate with jurisdiction over any aspect of the report, including the Committee on International Relations, the Committee on Financial Services, and the Committee on Energy and Commerce of the House of Representatives, before January 31 and July 31 of each year on all the reviews and investigations of covered transactions conducted under subsection (b) during the 6-month period covered by the report.*

(2) *CONTENTS OF REPORT RELATING TO COVERED TRANSACTIONS.*—*The report under paragraph (1) shall contain the following information with respect to each covered transaction:*

(A) A list of all notices filed and all reviews or investigations conducted during the period with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about the status of the review or investigation, information on any withdrawal from the process, any roll-call votes by the Committee under this section, any extension of time for any investigation, and any presidential decision or action under this section.

(B) Specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and presidential decisions or actions under this section.

(C) Cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated.

(D) Information on whether companies that withdrew notices to the Committee in accordance with subsection (b)(1)(C)(ii) have later re-filed such notices, or, alternatively, abandoned the transaction.

(E) The types of security arrangements and conditions the Committee has used to mitigate national security concerns about a transaction.

(F) A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next such report, to the extent possible.

(3) CONTENTS OF REPORT RELATING TO CRITICAL TECHNOLOGIES.—

(A) IN GENERAL.—In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall include in the semi-annual report submitted under paragraph (1) the following:

(i) An evaluation of whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer.

(ii) An evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

(B) CRITICAL TECHNOLOGIES DEFINED.—For purposes of this paragraph, the term “critical technologies” means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 or other critical technology, critical components, or critical technology items essential to national defense or national security identified pursuant to this section.

(C) *RELEASE OF UNCLASSIFIED STUDY.*—That portion of the semi-annual report under paragraph (1) that is required by this paragraph may be classified. An unclassified version of that portion of the report shall be made available to the public.

(n) *CERTIFICATION OF NOTICES AND ASSURANCES.*—Each notice required to be submitted to the President or the President's designee under this section and regulations prescribed under such section, and each report required pursuant to paragraph (3)(B)(ii) of subsection (1) with respect to the implementation of any mitigation agreement or condition described in paragraph (1)(A) of such subsection or any material change in circumstances shall be accompanied by a written statement by the chief executive officer or the designee of the person required to submit such notice or report certifying that, to the best of the person's knowledge and belief—

(1) the notice or report submitted fully complies with the requirements of this section or such regulation, agreement, or condition; and

(2) the information so contained is accurate and complete in all material respects.

