

**Calendar No. 197**110TH CONGRESS  
1ST SESSION**S. 1610****[Report No. 110–80]**

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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 13, 2007

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

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**A BILL**

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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Foreign Investment and National Security Act of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. United States security improvement amendments; clarification of review and investigation process.
- Sec. 3. Statutory establishment of the Committee on Foreign Investment in the United States.
- Sec. 4. Additional factors for consideration.
- Sec. 5. Mitigation, tracking, and postconsummation monitoring and enforcement.
- Sec. 6. Action by the President.
- Sec. 7. Increased oversight by Congress.
- Sec. 8. Certification of notices and assurances.
- Sec. 9. Regulations.
- Sec. 10. Effect on other law.
- Sec. 11. Effective date.

6 **SEC. 2. UNITED STATES SECURITY IMPROVEMENT AMEND-**  
7 **MENTS; CLARIFICATION OF REVIEW AND IN-**  
8 **VESTIGATION PROCESS.**

9 Section 721 of the Defense Production Act of 1950  
10 (50 U.S.C. App. 2170) is amended by striking subsections  
11 (a) and (b) and inserting the following:

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

14 “(1) COMMITTEE; CHAIRPERSON.—The terms  
15 ‘Committee’ and ‘chairperson’ mean the Committee  
16 on Foreign Investment in the United States and the  
17 chairperson thereof, respectively.

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

4           “(3) COVERED TRANSACTION.—The term ‘cov-  
5 ered transaction’ means any merger, acquisition, or  
6 takeover, by or with any foreign person which could  
7 result in foreign control of any person engaged in  
8 interstate commerce in the United States.

9           “(4) FOREIGN GOVERNMENT-CONTROLLED  
10 TRANSACTION.—The term ‘foreign government-con-  
11 trolled transaction’ means any covered transaction  
12 that could result in the control of any person en-  
13 gaged in interstate commerce in the United States  
14 by a foreign government or an entity controlled by  
15 or acting on behalf of a foreign government.

16           “(5) CLARIFICATION.—The term ‘national secu-  
17 rity’ shall be construed so as to include those issues  
18 relating to ‘homeland security’, including its applica-  
19 tion to critical infrastructure.

20           “(6) CRITICAL INFRASTRUCTURE.—The term  
21 ‘critical infrastructure’ means, subject to rules  
22 issued under this section, any systems and assets,  
23 whether physical or cyber-based, so vital to the  
24 United States that the degradation or destruction of  
25 such systems or assets would have a debilitating im-

1 pact on national security, including national eco-  
2 nomic security and national public health or safety.

3 “(7) CRITICAL TECHNOLOGIES.—The term  
4 ‘critical technologies’ means technologies identified  
5 under title VI of the National Science and Tech-  
6 nology Policy, Organization, and Priorities Act of  
7 1976, or other critical technology, critical compo-  
8 nents, or critical technology items essential to na-  
9 tional defense identified pursuant to this section.

10 “(8) LEAD AGENCY.—The term ‘lead agency’  
11 means the agency, or agencies, designated as the  
12 lead agency or agencies pursuant to subsection  
13 (k)(4) for the review of a transaction.

14 “(b) NATIONAL SECURITY REVIEWS AND INVESTIGA-  
15 TIONS.—

16 “(1) NATIONAL SECURITY REVIEWS.—

17 “(A) IN GENERAL.—Upon receiving writ-  
18 ten notification under subparagraph (C) of any  
19 covered transaction, or pursuant to a unilateral  
20 notification initiated under subparagraph (D)  
21 with respect to any covered transaction, the  
22 President, acting through the Committee—

23 “(i) shall review the covered trans-  
24 action to determine the effects of the

1 transaction on the national security of the  
2 United States; and

3 “(ii) shall consider the factors speci-  
4 fied in subsection (f) for such purpose, as  
5 appropriate.

6 “(B) CONTROL BY FOREIGN GOVERN-  
7 MENT.—If the Committee determines that the  
8 covered transaction is a foreign government-  
9 controlled transaction, the Committee shall con-  
10 duct an investigation of the transaction under  
11 paragraph (2).

12 “(C) WRITTEN NOTICE.—

13 “(i) IN GENERAL.—Any party or par-  
14 ties to any covered transaction may initiate  
15 a review of the transaction under this  
16 paragraph by submitting a written notice  
17 of the transaction to the Chairperson of  
18 the Committee.

19 “(ii) WITHDRAWAL OF NOTICE.—No  
20 covered transaction for which a notice was  
21 submitted under clause (i) may be with-  
22 drawn from review, unless a written re-  
23 quest for such withdrawal is submitted to  
24 the Committee by any party to the trans-  
25 action and approved by the Committee.

1           “(iii) CONTINUING DISCUSSIONS.—A  
2           request for withdrawal under clause (ii)  
3           shall not be construed to preclude any  
4           party to the covered transaction from con-  
5           tinuing informal discussions with the Com-  
6           mittee or any member thereof regarding  
7           possible resubmission for review pursuant  
8           to this paragraph.

9           “(D) UNILATERAL INITIATION OF RE-  
10          VIEW.—Subject to subparagraph (F), the Presi-  
11          dent or the Committee may initiate a review  
12          under subparagraph (A) of—

13                 “(i) any covered transaction;

14                 “(ii) any covered transaction that has  
15                 previously been reviewed or investigated  
16                 under this section, if any party to the  
17                 transaction submitted false or misleading  
18                 material information to the Committee in  
19                 connection with the review or investigation  
20                 or omitted material information, including  
21                 material documents, from information sub-  
22                 mitted to the Committee; or

23                 “(iii) any covered transaction that has  
24                 previously been reviewed or investigated  
25                 under this section, if—

1           “(I) any party to the transaction  
2           or the entity resulting from con-  
3           summation of the transaction inten-  
4           tionally materially breaches a mitiga-  
5           tion agreement or condition described  
6           in subsection (l)(1)(A);

7           “(II) such breach is certified to  
8           the Committee by the lead department  
9           or agency monitoring and enforcing  
10          such agreement or condition as an in-  
11          tentional material breach; and

12          “(III) the Committee determines  
13          that there are no other remedies or  
14          enforcement tools available to address  
15          such breach.

16          “(E) TIMING.—Any review under this  
17          paragraph shall be completed before the end of  
18          the 30-day period beginning on the date of the  
19          acceptance of written notice under subpara-  
20          graph (C) by the chairperson, or beginning on  
21          the date of the initiation of the review in ac-  
22          cordance with subparagraph (D), as applicable.

23          “(F) LIMIT ON DELEGATION OF CERTAIN  
24          AUTHORITY.—The authority of the Committee  
25          to initiate a review under subparagraph (D)

1           may not be delegated to any person, other than  
2           the Deputy Secretary or an appropriate Under  
3           Secretary of the department or agency rep-  
4           resented on the Committee.

5           “(2) NATIONAL SECURITY INVESTIGATIONS.—

6                   “(A) IN GENERAL.—In each case described  
7           in subparagraph (B) the President, acting  
8           through the Committee, shall immediately con-  
9           duct an investigation of the effects of a covered  
10          transaction on the national security of the  
11          United States, and take any necessary actions  
12          in connection with the transaction to protect  
13          the national security of the United States.

14                   “(B) APPLICABILITY.—Subparagraph (A)  
15          shall apply in each case in which—

16                           “(i) a review of a covered transaction  
17                           under paragraph (1) results in a deter-  
18                           mination that—

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



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

3                   “(III) the transaction would re-  
4                   sult in control of any critical infra-  
5                   structure of or within the United  
6                   States by, with, or on behalf of any  
7                   foreign person, if the Committee de-  
8                   termines that the transaction could  
9                   impair national security, and that  
10                  such impairment to national security  
11                  has not been mitigated by assurances  
12                  provided or renewed with the approval  
13                  of the Committee, as described in sub-  
14                  section (l), during the review period  
15                  under paragraph (1); or

16                  “(ii) the lead agency recommends, and  
17                  the Committee concurs, that an investiga-  
18                  tion be undertaken.

19                  “(C) TIMING.—Any investigation under  
20                  subparagraph (A) shall be completed before the  
21                  end of the 45-day period beginning on the date  
22                  on which the investigation commenced.

23                  “(D) EXCEPTION.—

24                  “(i) IN GENERAL.—Notwithstanding  
25                  subparagraph (B)(i), an investigation of a

1 foreign government-controlled transaction  
2 described in subclause (II) of subpara-  
3 graph (B)(i) or a transaction involving  
4 critical infrastructure described in sub-  
5 clause (III) of subparagraph (B)(i) shall  
6 not be required under this paragraph, if  
7 the Secretary of the Treasury and the head  
8 of the lead agency jointly determine, on the  
9 basis of the review of the transaction  
10 under paragraph (1), that the transaction  
11 will not impair the national security of the  
12 United States.

13 “(ii) NONDELEGATION.—The author-  
14 ity of the Secretary or the head of an  
15 agency referred to in clause (i) may not be  
16 delegated to any person, other than the  
17 Deputy Secretary of the Treasury or the  
18 deputy head (or the equivalent thereof) of  
19 the lead agency, respectively.

20 “(E) GUIDANCE ON CERTAIN TRANS-  
21 ACTIONS WITH NATIONAL SECURITY IMPLICA-  
22 TIONS.—The Chairperson shall, not later than  
23 180 days after the date of enactment of the  
24 Foreign Investment and National Security Act  
25 of 2007, publish in the Federal Register guid-

1           ance on the types of transactions that the Com-  
2           mittee has reviewed and that have presented  
3           national security considerations, including  
4           transactions that may constitute covered trans-  
5           actions that would result in control of critical  
6           infrastructure relating to United States na-  
7           tional security by a foreign government or an  
8           entity controlled by or acting on behalf of a for-  
9           eign government.

10          “(3) CERTIFICATIONS TO CONGRESS.—

11                 “(A) CERTIFIED NOTICE AT COMPLETION  
12                 OF REVIEW.—Upon completion of a review  
13                 under subsection (b) that concludes action  
14                 under this section, the chairperson and the  
15                 head of the lead agency shall transmit a cer-  
16                 tified notice to the members of Congress speci-  
17                 fied in subparagraph (C)(iii).

18                 “(B) CERTIFIED REPORT AT COMPLETION  
19                 OF INVESTIGATION.—As soon as is practicable  
20                 after completion of an investigation under sub-  
21                 section (b) that concludes action under this sec-  
22                 tion, the chairperson and the head of the lead  
23                 agency shall transmit to the members of Con-  
24                 gress specified in subparagraph (C)(iii) a cer-  
25                 tified written report (consistent with the re-

1            requirements of subsection (c)) on the results of  
2            the investigation, unless the matter under inves-  
3            tigation has been sent to the President for deci-  
4            sion.

5            “(C) CERTIFICATION PROCEDURES.—

6            “(i) IN GENERAL.—Each certified no-  
7            tice and report required under subpara-  
8            graphs (A) and (B), respectively, shall be  
9            submitted to the members of Congress  
10           specified in clause (iii), and shall include—

11                    “(I) a description of the actions  
12                    taken by the Committee with respect  
13                    to the transaction; and

14                    “(II) identification of the deter-  
15                    minative factors considered under  
16                    subsection (f).

17            “(ii) CONTENT OF CERTIFICATION.—

18            Each certified notice and report required  
19            under subparagraphs (A) and (B), respec-  
20            tively, shall be signed by the chairperson  
21            and the head of the lead agency, and shall  
22            state that, in the determination of the  
23            Committee, there are no unresolved na-  
24            tional security concerns with the trans-

1 action that is the subject of the notice or  
2 report.

3 “(iii) MEMBERS OF CONGRESS.—Each  
4 certified notice and report required under  
5 subparagraphs (A) and (B), respectively,  
6 shall be transmitted to—

7 “(I) the Majority Leader and the  
8 Minority Leader of the Senate;

9 “(II) the chair and ranking mem-  
10 ber of the Committee on Banking,  
11 Housing, and Urban Affairs of the  
12 Senate and of any committee of the  
13 Senate having oversight over the lead  
14 agency;

15 “(III) the Speaker and the Mi-  
16 nority Leader of the House of Rep-  
17 resentatives; and

18 “(IV) the chair and ranking  
19 member of the Committee on Finan-  
20 cial Services of the House of Rep-  
21 resentatives and of any committee of  
22 the House of Representatives having  
23 oversight over the lead agency.

24 “(iv) TRANSMITTAL TO OTHER MEM-  
25 BERS OF CONGRESS.—The Majority Lead-

1 er or the Minority Leader, in the case of  
2 the Senate, and the Speaker or the Minor-  
3 ity Leader, in the case of the House of  
4 Representatives, may provide the certified  
5 notices and reports required under sub-  
6 paragraphs (A) and (B), respectively, re-  
7 garding a transaction involving critical in-  
8 frastructure—

9 “(I) in the case of the Senate, to  
10 members of the Senate from the State  
11 in which such critical infrastructure is  
12 located; and

13 “(II) in the case of the House of  
14 Representatives, to a member from a  
15 Congressional District in which such  
16 critical infrastructure is located.

17 “(v) SIGNATURES; LIMIT ON DELEGA-  
18 TION.—

19 “(I) IN GENERAL.—Each cer-  
20 tified notice and report required under  
21 subparagraphs (A) and (B), respec-  
22 tively, shall be signed by the chair-  
23 person and the head of the lead agen-  
24 cy, which signature requirement may

1 only be delegated in accordance with  
2 subclause (II).

3 “(II) LIMITATION ON DELEGA-  
4 TION OF CERTIFICATIONS.—The  
5 chairperson and the head of the lead  
6 agency may delegate the signature re-  
7 quirement under subclause (I)—

8 “(aa) only to an employee of  
9 the Department of the Treasury  
10 (in the case of the Secretary of  
11 the Treasury) or to an employee  
12 of the lead agency (in the case of  
13 the lead agency) who was ap-  
14 pointed by the President, by and  
15 with the advice and consent of  
16 the Senate, with respect to any  
17 notice provided under paragraph  
18 (1) following the completion of a  
19 review under this section; or

20 “(bb) only to a Deputy Sec-  
21 retary of the Treasury (in the  
22 case of the Secretary of the  
23 Treasury) or a person serving in  
24 the Deputy position or the equiv-  
25 alent thereof at the lead agency

1 (in the case of the lead agency),  
2 with respect to any report pro-  
3 vided under subparagraph (B)  
4 following an investigation under  
5 this section.

6 “(4) ANALYSIS BY DIRECTOR OF NATIONAL IN-  
7 TELLIGENCE.—

8 “(A) IN GENERAL.—The Director of Na-  
9 tional Intelligence shall expeditiously carry out  
10 a thorough analysis of any threat to the na-  
11 tional security of the United States posed by  
12 any covered transaction. The Director of Na-  
13 tional Intelligence shall also seek and incor-  
14 porate the views of all affected or appropriate  
15 intelligence agencies with respect to the trans-  
16 action.

17 “(B) TIMING.—The analysis required  
18 under subparagraph (A) shall be provided by  
19 the Director of National Intelligence to the  
20 Committee not later than 20 days after the  
21 date on which notice of the transaction is ac-  
22 cepted by the Committee under paragraph  
23 (1)(C), but the Director may begin the analysis  
24 at any time prior to receipt of the notice, in ac-  
25 cordance with otherwise applicable law.



1           “(C) INTERACTION WITH INTELLIGENCE  
2           COMMUNITY.—The Director of National Intel-  
3           ligence shall ensure that the intelligence com-  
4           munity remains engaged in the collection, anal-  
5           ysis, and dissemination to the Committee of any  
6           additional relevant information that may be-  
7           come available during the course of any inves-  
8           tigation conducted under subsection (b) with re-  
9           spect to a transaction.

10           “(D) INDEPENDENT ROLE OF DIREC-  
11           TOR.—The Director of National Intelligence  
12           shall be an ex officio member of the Committee,  
13           and shall be provided with all notices received  
14           by the Committee under paragraph (1)(C) re-  
15           garding covered transactions, but shall serve no  
16           policy role on the Committee, other than to pro-  
17           vide analysis under subparagraphs (A) and (C)  
18           in connection with a covered transaction.

19           “(5) SUBMISSION OF ADDITIONAL INFORMA-  
20           TION.—No provision of this subsection shall be con-  
21           strued as prohibiting any party to a covered trans-  
22           action from submitting additional information con-  
23           cerning the transaction, including any proposed re-  
24           structuring of the transaction or any modifications  
25           to any agreements in connection with the trans-

1 action, while any review or investigation of the  
2 transaction is ongoing.

3 “(6) NOTICE OF RESULTS TO PARTIES.—The  
4 Committee shall notify the parties to a covered  
5 transaction of the results of a review or investigation  
6 under this section, promptly upon completion of all  
7 action under this section.

8 “(7) REGULATIONS.—Regulations prescribed  
9 under this section shall include standard procedures  
10 for—

11 “(A) submitting any notice of a covered  
12 transaction to the Committee;

13 “(B) submitting a request to withdraw a  
14 covered transaction from review;

15 “(C) resubmitting a notice of a covered  
16 transaction that was previously withdrawn from  
17 review; and

18 “(D) providing notice of the results of a  
19 review or investigation to the parties to the cov-  
20 ered transaction, upon completion of all action  
21 under this section.”.

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

4 Section 721 of the Defense Production Act of 1950  
5 (50 U.S.C. App. 2170) is amended by striking subsection  
6 (k) and inserting the following:

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

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

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

18 “(A) The Secretary of the Treasury.

19 “(B) The Secretary of Homeland Security.

20 “(C) The Secretary of Commerce.

21 “(D) The Secretary of Defense.

22 “(E) The Secretary of State.

23 “(F) The Attorney General of the United  
24 States.

25 “(G) The Secretary of Energy.

26 “(H) The Secretary of Labor (ex officio).

1           “(I) The Director of National Intelligence  
2           (ex officio).

3           “(J) The heads of any other executive de-  
4           partment, agency, or office, as the President  
5           determines appropriate, generally or on a case-  
6           by-case basis.

7           “(3) CHAIRPERSON.—The Secretary of the  
8           Treasury shall serve as the chairperson of the Com-  
9           mittee.

10          “(4) DESIGNATION OF LEAD AGENCY.—The  
11          Secretary of the Treasury shall designate another  
12          member or members, as appropriate, of the Com-  
13          mittee to be the lead agency or agencies on behalf  
14          of the Committee—

15                 “(A) for each covered transaction, and for  
16                 negotiating any mitigation agreements or other  
17                 conditions necessary to protect national secu-  
18                 rity; and

19                 “(B) for all matters related to the moni-  
20                 toring of the completed transaction, to ensure  
21                 compliance with such agreements or conditions  
22                 and with this section.

23          “(5) OTHER MEMBERS.—The chairperson shall  
24          consult with the heads of such other Federal depart-  
25          ments, agencies, and independent establishments in

1 any review or investigation under subsection (a), as  
2 the chairperson determines to be appropriate, on the  
3 basis of the facts and circumstances of the covered  
4 transaction under review or investigation (or the  
5 designee of any such department or agency head).

6 “(6) MEETINGS.—The Committee shall meet  
7 upon the direction of the President or upon the call  
8 of the chairperson, without regard to section 552b of  
9 title 5, United States Code (if otherwise applica-  
10 ble).”.

11 **SEC. 4. ADDITIONAL FACTORS FOR CONSIDERATION.**

12 Section 721(f) of the Defense Production Act of 1950  
13 (50 U.S.C. App. 2170(f)) is amended—

14 (1) in the matter preceding paragraph (1), by  
15 striking “among other factors”;

16 (2) in paragraph (4)—

17 (A) in subparagraph (A) by striking “or”  
18 at the end;

19 (B) by redesignating subparagraph (B) as  
20 subparagraph (C);

21 (C) by inserting after subparagraph (A)  
22 the following:

23 “(B) identified by the Secretary of Defense  
24 as posing a potential regional military threat to  
25 the interests of the United States; or”; and

1 (D) by striking “and” at the end;

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

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

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

8 “(7) the potential effects on United States crit-  
9 ical infrastructure, including major energy assets;

10 “(8) the potential effects on United States crit-  
11 ical technologies;

12 “(9) whether the covered transaction is a for-  
13 eign government-controlled transaction, as deter-  
14 mined under subsection (b)(1)(B);

15 “(10) with respect to transactions requiring an  
16 investigation under subsection (b)(1)(B) only, a re-  
17 view of the current assessment of—

18 “(A) the adherence of the subject country  
19 to nonproliferation control regimes, including  
20 treaties and multilateral supply guidelines,  
21 which shall draw on, but not be limited to, the  
22 annual report on ‘Adherence to and Compliance  
23 with Arms Control, Nonproliferation and Disar-  
24 mament Agreements and Commitments’ re-

1           required by section 403 of the Arms Control and  
2           Disarmament Act;

3           “(B) the relationship of such country with  
4           the United States, specifically on its record on  
5           cooperating in counter-terrorism efforts, which  
6           shall draw on, but not be limited to, the report  
7           of the President to Congress under section  
8           7120 of the Intelligence Reform and Terrorism  
9           Prevention Act of 2004; and

10           “(C) the potential for transshipment or di-  
11           version of technologies with military applica-  
12           tions, including an analysis of national export  
13           control laws and regulations;

14           “(11) the long-term projection of United States  
15           requirements for sources of energy and other critical  
16           resources and material; and

17           “(12) such other factors as the President or the  
18           Committee may determine to be appropriate, gen-  
19           erally or in connection with a specific review or in-  
20           vestigation.”.

21 **SEC. 5. MITIGATION, TRACKING, AND POSTCONSUMMATION**

22 **MONITORING AND ENFORCEMENT.**

23           Section 721 of the Defense Production Act of 1950  
24           (50 U.S.C. App. 2170) is amended by adding at the end  
25           the following:

1       “(1)       MITIGATION,       TRACKING,       AND  
2 POSTCONSUMMATION   MONITORING   AND   ENFORCE-  
3 MENT.—

4       “(1) MITIGATION.—

5               “(A) IN GENERAL.—The Committee or a  
6 lead agency may, on behalf of the Committee,  
7 negotiate, enter into or impose, and enforce any  
8 agreement or condition with any party to the  
9 covered transaction in order to mitigate any  
10 threat to the national security of the United  
11 States that arises as a result of the covered  
12 transaction.

13              “(B) RISK-BASED ANALYSIS REQUIRED.—  
14 Any agreement entered into or condition im-  
15 posed under subparagraph (A) shall be based  
16 on a risk-based analysis, conducted by the Com-  
17 mittee, of the threat to national security of the  
18 covered transaction.

19       “(2) TRACKING AUTHORITY FOR WITHDRAWN  
20 NOTICES.—

21              “(A) IN GENERAL.—If any written notice  
22 of a covered transaction that was submitted to  
23 the Committee under this section is withdrawn  
24 before any review or investigation by the Com-



1           mittee under subsection (b) is completed, the  
2           Committee shall establish, as appropriate—

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

11                  “(ii) specific time frames for resub-  
12                  mitting any such written notice; and

13                  “(iii) a process for tracking any ac-  
14                  tions that may be taken by any party to  
15                  the transaction, in connection with the  
16                  transaction, before the notice referred to in  
17                  clause (ii) is resubmitted.

18                  “(B) DESIGNATION OF AGENCY.—The lead  
19                  agency, other than any entity of the intelligence  
20                  community (as defined in the National Security  
21                  Act of 1947), shall, on behalf of the Committee,  
22                  ensure that the requirements of subparagraph  
23                  (A) with respect to any covered transaction that  
24                  is subject to such subparagraph are met.

1           “(3) NEGOTIATION, MODIFICATION, MONI-  
2 TORING, AND ENFORCEMENT.—

3           “(A) DESIGNATION OF LEAD AGENCY.—

4           The lead agency shall negotiate, modify, mon-  
5 itor, and enforce, on behalf of the Committee,  
6 any agreement entered into or condition im-  
7 posed under paragraph (1) with respect to a  
8 covered transaction, based on the expertise with  
9 and knowledge of the issues related to such  
10 transaction on the part of the designated de-  
11 partment or agency. Nothing in this paragraph  
12 shall prohibit other departments or agencies in  
13 assisting the lead agency in carrying out the  
14 purposes of this paragraph.

15           “(B) REPORTING BY DESIGNATED AGEN-  
16 CY.—

17           “(i) MODIFICATION REPORTS.—The  
18 lead agency in connection with any agree-  
19 ment entered into or condition imposed  
20 with respect to a covered transaction  
21 shall—

22                   “(I) provide periodic reports to  
23 the Committee on any material modi-  
24 fication to any such agreement or con-

1           dition imposed with respect to the  
2           transaction; and

3                   “(II) ensure that any material  
4                   modification to any such agreement or  
5                   condition is reported to the Director  
6                   of National Intelligence, the Attorney  
7                   General of the United States, and any  
8                   other Federal department or agency  
9                   that may have a material interest in  
10                  such modification.

11                  “(ii) COMPLIANCE.—The Committee  
12                  shall develop and agree upon methods for  
13                  evaluating compliance with any agreement  
14                  entered into or condition imposed with re-  
15                  spect to a covered transaction that will  
16                  allow the Committee to adequately assure  
17                  compliance, without—

18                          “(I) unnecessarily diverting Com-  
19                          mittee resources from assessing any  
20                          new covered transaction for which a  
21                          written notice has been filed pursuant  
22                          to subsection (b)(1)(C), and if nec-  
23                          essary, reaching a mitigation agree-  
24                          ment with or imposing a condition on  
25                          a party to such covered transaction or

1 any covered transaction for which a  
2 review has been reopened for any rea-  
3 son; or

4 “(II) placing unnecessary bur-  
5 dens on a party to a covered trans-  
6 action.”.

7 **SEC. 6. ACTION BY THE PRESIDENT.**

8 Section 721 of the Defense Production Act of 1950  
9 (50 U.S.C. App. 2170) is amended by striking subsections  
10 (d) and (e) and inserting the following:

11 “(d) ACTION BY THE PRESIDENT.—

12 “(1) IN GENERAL.—Subject to paragraph (4),  
13 the President may take such action for such time as  
14 the President considers appropriate to suspend or  
15 prohibit any covered transaction by or with a foreign  
16 person or government that threatens to impair the  
17 national security of the United States.

18 “(2) ANNOUNCEMENT BY THE PRESIDENT.—

19 The President shall announce the decision on wheth-  
20 er or not to take action pursuant to paragraph (1)  
21 not later than 15 days after the date on which an  
22 investigation described in subsection (b) is com-  
23 pleted.

24 “(3) ENFORCEMENT.—The President may di-  
25 rect the Attorney General of the United States to

1 seek appropriate relief, including divestment relief,  
2 in the district courts of the United States, in order  
3 to implement and enforce this subsection.

4 “(4) FINDINGS OF THE PRESIDENT.—The  
5 President may exercise the authority conferred by  
6 paragraph (1), only if the President finds that—

7 “(A) there is credible evidence that leads  
8 the President to believe that the foreign interest  
9 exercising control might take action that threat-  
10 ens to impair the national security; and

11 “(B) provisions of law, other than this sec-  
12 tion and the International Emergency Economic  
13 Powers Act, do not, in the judgment of the  
14 President, provide adequate and appropriate  
15 authority for the President to protect the na-  
16 tional security in the matter before the Presi-  
17 dent.

18 “(5) FACTORS TO BE CONSIDERED.—For pur-  
19 poses of determining whether to take action under  
20 paragraph (1), the President shall consider, among  
21 other factors each of the factors described in sub-  
22 section (f).

23 “(e) ACTIONS AND FINDINGS NONREVIEWABLE.—  
24 The actions of the President under paragraph (1) of sub-  
25 section (d) and the findings of the President under para-

1 graph (4) of subsection (d) shall not be subject to judicial  
2 review.”.

3 **SEC. 7. INCREASED OVERSIGHT BY CONGRESS.**

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

7 “(g) ADDITIONAL INFORMATION TO CONGRESS; CON-  
8 FIDENTIALITY.—

9 “(1) BRIEFING REQUIREMENT ON REQUEST.—

10 The Committee shall, upon request from any Mem-  
11 ber of Congress specified in subsection (b)(3)(C)(iii),  
12 promptly provide briefings on a covered transaction  
13 for which all action has concluded under this section,  
14 or on compliance with a mitigation agreement or  
15 condition imposed with respect to such transaction,  
16 on a classified basis, if deemed necessary by the sen-  
17 sitivity of the information. Briefings under this  
18 paragraph may be provided to the congressional  
19 staff of such a Member of Congress having appro-  
20 priate security clearance.

21 “(2) APPLICATION OF CONFIDENTIALITY PROVI-  
22 SIONS.—

23 “(A) IN GENERAL.—The disclosure of in-  
24 formation under this subsection shall be con-  
25 sistent with the requirements of subsection (c).

1           Members of Congress and staff of either House  
2           of Congress or any committee of Congress, shall  
3           be subject to the same limitations on disclosure  
4           of information as are applicable under sub-  
5           section (c).

6           “(B) PROPRIETARY INFORMATION.—Pro-  
7           prietary information which can be associated  
8           with a particular party to a covered transaction  
9           shall be furnished in accordance with subpara-  
10          graph (A) only to a committee of Congress, and  
11          only when the committee provides assurances of  
12          confidentiality, unless such party otherwise con-  
13          sents in writing to such disclosure.”.

14          (b) ANNUAL REPORT.—Section 721 of the Defense  
15          Production Act of 1950 (50 U.S.C. App. 2170) is amend-  
16          ed by adding at the end the following:

17          “(m) ANNUAL REPORT TO CONGRESS.—

18                 “(1) IN GENERAL.—The chairperson shall  
19                 transmit a report to the chairman and ranking  
20                 member of the committee of jurisdiction in the Sen-  
21                 ate and the House of Representatives, before July  
22                 31 of each year on all of the reviews and investiga-  
23                 tions of covered transactions completed under sub-  
24                 section (b) during the 12-month period covered by  
25                 the report.

1           “(2) CONTENTS OF REPORT RELATING TO COV-  
2           ERED TRANSACTIONS.—The annual report under  
3           paragraph (1) shall contain the following informa-  
4           tion with respect to each covered transaction for the  
5           reporting period:

6                   “(A) A list of all notices filed and all re-  
7                   views or investigations completed during the pe-  
8                   riod, with basic information on each party to  
9                   the transaction, the nature of the business ac-  
10                  tivities or products of all pertinent persons,  
11                  along with information about any withdrawal  
12                  from the process, and any decision or action by  
13                  the President under this section.

14                  “(B) Specific, cumulative, and, as appro-  
15                  priate, trend information on the numbers of fil-  
16                  ings, investigations, withdrawals, and decisions  
17                  or actions by the President under this section.

18                  “(C) Cumulative and, as appropriate,  
19                  trend information on the business sectors in-  
20                  volved in the filings which have been made, and  
21                  the countries from which the investments have  
22                  originated.

23                  “(D) Information on whether companies  
24                  that withdrew notices to the Committee in ac-  
25                  cordance with subsection (b)(1)(C)(ii) have



1 later refiled such notices, or, alternatively,  
2 abandoned the transaction.

3 “(E) The types of security arrangements  
4 and conditions the Committee has used to miti-  
5 gate national security concerns about a trans-  
6 action, including a discussion of the methods  
7 that the Committee and any lead agency are  
8 using to determine compliance with such ar-  
9 rangements or conditions.

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

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

19 “(A) IN GENERAL.—In order to assist  
20 Congress in its oversight responsibilities with  
21 respect to this section, the President and such  
22 agencies as the President shall designate shall  
23 include in the annual report submitted under  
24 paragraph (1)—

1           “(i) an evaluation of whether there is  
2           credible evidence of a coordinated strategy  
3           by 1 or more countries or companies to ac-  
4           quire United States companies involved in  
5           research, development, or production of  
6           critical technologies for which the United  
7           States is a leading producer; and

8           “(ii) an evaluation of whether there  
9           are industrial espionage activities directed  
10          or directly assisted by foreign governments  
11          against private United States companies  
12          aimed at obtaining commercial secrets re-  
13          lated to critical technologies.

14          “(B)    RELEASE    OF    UNCLASSIFIED  
15          STUDY.—That portion of the annual report  
16          under paragraph (1) that is required by this  
17          paragraph may be classified. An unclassified  
18          version of the report, as appropriate, consistent  
19          with safeguarding national security and privacy,  
20          shall be made available to the public.”.

21          (c) STUDY AND REPORT.—

22               (1) STUDY REQUIRED.—Before the end of the  
23               120-day period beginning on the date of enactment  
24               of this Act and annually thereafter, the Secretary of  
25               the Treasury, in consultation with the Secretary of

1 State and the Secretary of Commerce, shall conduct  
2 a study on foreign direct investments in the United  
3 States, especially investments in critical infrastruc-  
4 ture and industries affecting national security, by—

5 (A) foreign governments, entities controlled  
6 by or acting on behalf of a foreign government,  
7 or persons of foreign countries which comply  
8 with any boycott of Israel; or

9 (B) foreign governments, entities con-  
10 trolled by or acting on behalf of a foreign gov-  
11 ernment, or persons of foreign countries which  
12 do not ban organizations designated by the Sec-  
13 retary of State as foreign terrorist organiza-  
14 tions.

15 (2) REPORT.—Before the end of the 30-day pe-  
16 riod beginning upon the date of completion of each  
17 study under paragraph (1), or in the next annual re-  
18 port under section 721(m) of the Defense Produc-  
19 tion Act of 1950 (as added by this section), the Sec-  
20 retary of the Treasury shall submit a report to the  
21 Congress, for transmittal to all appropriate commit-  
22 tees of the Senate and the House of Representatives,  
23 containing the findings and conclusions of the Sec-  
24 retary with respect to the study described in para-  
25 graph (1), together with an analysis of the effects of

1 such investment on the national security of the  
2 United States and on any efforts to address those  
3 effects.

4 (d) INVESTIGATION BY INSPECTOR GENERAL.—

5 (1) IN GENERAL.—The Inspector General of  
6 the Department of the Treasury shall conduct an  
7 independent investigation to determine all of the  
8 facts and circumstances concerning each failure of  
9 the Department of the Treasury to make any report  
10 to the Congress that was required under section  
11 721(k) of the Defense Production Act of 1950, as in  
12 effect on the day before the date of enactment of  
13 this Act.

14 (2) REPORT TO THE CONGRESS.—Before the  
15 end of the 270-day period beginning on the date of  
16 enactment of this Act, the Inspector General of the  
17 Department of the Treasury shall submit a report  
18 on the investigation under paragraph (1) containing  
19 the findings and conclusions of the Inspector Gen-  
20 eral, to the chairman and ranking member of each  
21 committee of the Senate and the House of Rep-  
22 resentatives having jurisdiction over any aspect of  
23 the report, including, at a minimum, the Committee  
24 on Foreign Relations, the Committee on Banking,  
25 Housing, and Urban Affairs, and the Committee on

1 Commerce, Science, and Transportation of the Sen-  
2 ate, and the Committee on Foreign Affairs, the  
3 Committee on Financial Services, and the Com-  
4 mittee on Energy and Commerce of the House of  
5 Representatives.

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

7 Section 721 of the Defense Production Act of 1950  
8 (50 U.S.C. App. 2170) is amended by adding at the end  
9 the following:

10 “(n) CERTIFICATION OF NOTICES AND ASSUR-  
11 ANCES.—Each notice, and any followup information, sub-  
12 mitted under this section and regulations prescribed under  
13 this section to the President or the Committee by a party  
14 to a covered transaction, and any information submitted  
15 by any such party in connection with any action for which  
16 a report is required pursuant to paragraph (3)(B) of sub-  
17 section (l), with respect to the implementation of any miti-  
18 gation agreement or condition described in paragraph  
19 (1)(A) of subsection (l), or any material change in cir-  
20 cumstances, shall be accompanied by a written statement  
21 by the chief executive officer or the designee of the person  
22 required to submit such notice or information certifying  
23 that, to the best of the knowledge and belief of that per-  
24 son—

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

4           “(2) the notice or information is accurate and  
5           complete in all material respects.”.

6 **SEC. 9. REGULATIONS.**

7           Section 721(h) of the Defense Production Act of  
8           1950 (50 U.S.C. App. 2170(h)) is amended to read as  
9           follows:

10          “(h) REGULATIONS.—

11                 “(1) IN GENERAL.—The President shall direct,  
12                 subject to notice and comment, the issuance of regu-  
13                 lations to carry out this section.

14                 “(2) EFFECTIVE DATE.—Regulations issued  
15                 under this section shall become effective not later  
16                 than 180 days after the effective date of the Foreign  
17                 Investment and National Security Act of 2007.

18                 “(3) CONTENT.—Regulations issued under this  
19                 subsection shall—

20                         “(A) provide for the imposition of civil  
21                         penalties for any violation of this section;

22                         “(B) to the extent possible—

23                                 “(i) minimize paperwork burdens; and

24                                 “(ii) coordinate reporting require-  
25                                 ments under this section with reporting re-

1                    requirements under any other provision of  
2                    Federal law; and

3                    “(C) provide for an appropriate role for  
4                    the Secretary of Labor with respect to mitiga-  
5                    tion agreements.”.

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

7                    Section 721(i) of the Defense Production Act of 1950  
8    (50 U.S.C. App. 2170(i)) is amended to read as follows:

9                    “(i) EFFECT ON OTHER LAW.—No provision of this  
10                   section shall be construed as altering or affecting any  
11                   other authority, process, regulation, investigation, enforce-  
12                   ment measure, or review provided by or established under  
13                   any other provision of Federal law, including the Inter-  
14                   national Emergency Economic Powers Act, or any other  
15                   authority of the President or the Congress under the Con-  
16                   stitution of the United States.”.

17    **SEC. 11. EFFECTIVE DATE.**

18                   The amendments made by this Act shall apply after  
19                   the end of the 90-day period beginning on the date of en-  
20                   actment of this Act.

Calendar No. 197

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1610**

[Report No. 110-80]

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**A BILL**

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.

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JUNE 13, 2007

Read twice and placed on the calendar