

effect on the day before the date of enactment of this Act.

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

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 adding at the end the following:

“(n) CERTIFICATION OF NOTICES AND ASSURANCES.—Each notice, and any followup information, submitted under this section and regulations prescribed under this section to the President or the Committee by a party to a covered transaction, and any information submitted by any such party in connection with any action for which a report is required pursuant to paragraph (3)(B) of subsection (1), with respect to the implementation of any mitigation agreement or condition described in paragraph (1)(A) of subsection (1), 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 information certifying that, to the best of the knowledge and belief of that person—

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

“(2) the notice or information 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.—

“(1) IN GENERAL.—The President shall direct, subject to notice and comment, the issuance of regulations to carry out this section.

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

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

“(A) provide for the imposition of civil penalties for any violation of this section, including any mitigation agreement entered into or conditions imposed pursuant to subsection (1);

“(B) to the extent possible—

“(i) minimize paperwork burdens; and

“(ii) coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law; and

“(C) provide for an appropriate role for the Secretary of Labor with respect to mitigation agreements.”.

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.”.

SEC. 11. CLERICAL AMENDMENTS.

(a) TITLE 31.—Section 301(e) of title 31, United States Code, is amended by striking “8 Assistant” and inserting “9 Assistant”.

(b) TITLE 5.—Section 5315 of title 5, United States Code, is amended in the item relating to “Assistant Secretaries of the Treasury”, by striking “(8)” and inserting “(9)”.

SEC. 12. EFFECTIVE DATE.

The amendments made by this Act shall apply after the end of the 90-day period beginning on the date of enactment of this Act.

FOREIGN INVESTMENT AND NATIONAL SECURITY ACT OF 2007

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 197, S. 1610.

The PRESIDING OFFICER. The clerk will state the bill by title.

The bill clerk read as follows:

A bill (S. 1610) 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.

There being no objection, the Senate proceeded to consider the bill.

Mr. DODD. Madam President, section 721 of the Defense Production Act, also known as the Exon-Florio amendment, Exon-Florio, established a statutory framework for the U.S. Government to analyze foreign acquisitions, mergers, and takeovers of privately owned entities within the United States to determine whether such transactions affect the national security of the United States. The Foreign Investment and National Security Act of 2007 amends section 721 for the purpose of strengthening the process by which such transactions are reviewed and, when warranted, investigated for national security concerns. In addition, the act provides for a system of congressional notification so that Congress is able to conduct proper oversight of the national security implications of foreign direct investment in the United States to ensure that it is beneficial and has no adverse impact on U.S. national security.

Exon-Florio established a four-step process for examining a foreign acquisition: (1) voluntary notice by the companies; (2) a 30-day review to identify any national security concerns; (3) an optional 45-day investigation to determine whether identified concerns require more extensive mitigation efforts or a recommendation to the President for possible action; and (4) a Presidential decision to permit, suspend, or prohibit an acquisition in those instances where potential national security concerns cannot be mitigated.

During the standard review period, CFIUS conducts a national security analysis to determine whether any national security issues exist with a particular transaction, and if so, whether those concerns can be mitigated. In practice, companies sometime “pre-file” with CFIUS, providing information about the transaction in order to ensure that CFIUS has all necessary information during the formal review period. Further, companies may withdraw from the formal review in order to address concerns on the condition that they re-file promptly with CFIUS or abandon the transaction.

Therefore, while the vast majority of CFIUS transactions are approved by the end of the 30-day review, the total time devoted to transactions is sometimes longer. If national security concerns have not been resolved during the 30-day review, CFIUS can extend its review to a second stage 45-day investigation. At the end of a 45-day investigation, the transaction is sent to the President for a decision, accompanied by a CFIUS report and recommendation. Any transaction that goes to the President must be reported to Congress. Transactions that enter investigation may also be terminated before reaching the President, with the companies voluntarily withdrawing and abandoning the investment. Presidential decisions are also avoided in cases where a mitigation agreement has been reached during the investigation period and the companies withdraw from investigation and immediately refile.

Mitigation agreements, which are contracts with CFIUS or CFIUS agencies entered into by the parties to the transaction, are an important element of the CFIUS review and investigation process. These agreements are intended to mitigate possible national security threats posed by a transaction short of requiring that the parties abandon the transaction altogether. The Department of Defense, hereafter DOD, has for many years used various types of mitigation agreements under existing DOD authority and regulations such as the National Industrial Security Program Operating Manual, NISPOM, to address the impact of foreign ownership and control over companies that have classified contracts with the Pentagon or intelligence agencies. In recent years, the Departments of Justice and Homeland Security have also done so.

S. 1610 reinforces CFIUS’s capacity to refuse, suspend, modify or reverse any transaction if a written notice of such transaction is not filed with CFIUS or if there is an intentional material omission or falsehood in connection with a completed CFIUS review or investigation, or an intentional material breach in any posttransaction mitigation agreement, and establishes a formal requirement that all filings with CFIUS must be complete and accurate to the best of the filing party’s ability. Thus, the committee establishes a

clear signal that all violations of such notice certification should be considered in the context of title 18, section 1001, and all intentional breaches or misstatements could also lead to severe modification or divestment of an acquisition of a previously reviewed transaction at any time.

The bill also establishes a mechanism by which CFIUS can unilaterally reopen a transaction that had previously been approved. My expectation is that this authority will only be used in exceptional circumstances when no other remedies exist and where there has been an intentional breach that affects national security. For that reason, the bill requires important procedural safeguards to ensure that this authority is not used lightly—among other safeguards, it requires, for example, that the decision to reopen a case is made at the same level of seniority as is required in the bill for the approval of transactions. The bill makes clear that CFIUS can only reopen a transaction if these threshold tests are met.

Of necessity, the reviews and investigations, which contain classified evaluations of national security vulnerabilities as well as extensive proprietary business information, remain highly confidential. Given this lack of transparency, there have been concerns over the years about CFIUS's accountability to Congress and to the public, particularly with regard to fundamental questions of whether CFIUS policies are consistent with the statute, executive orders, and regulations that govern its operations and whether CFIUS policies are applied consistently from transaction to transaction.

CFIUS has explicit authority in the regulations to open a case in the event that CFIUS discovers there has been a material misstatement or omission in the information provided by the parties to the transaction. CFIUS agencies also have all of the remedies that are normally available under a contract in order to enforce the terms of the mitigation agreement. In addition, in a large number of CFIUS cases, and particularly those involving the Defense Department, CFIUS approvals can be effectively nullified simply by ending the federal agency's contracting relationship with the company. Defense-related contracts are often a central element of CFIUS transactions, so the threat of being denied a contract going forward ensures compliance with the terms of mitigation agreements or other conditions agreed to by the foreign investor.

On October 6, 2005, under the leadership of then-Chairman RICHARD SHELBY, the Committee on Banking, Housing, and Urban Affairs conducted a hearing into the findings of the GAO report. Discussion between the GAO witnesses and Banking Committee members further highlighted deficiencies in implementation of Exon-Florio and the level of dissatisfaction with the lack of communication be-

tween CFIUS and the appropriate oversight committees of Congress. That hearing was followed on October 20, 2005, by another hearing that allowed the Banking Committee to hear directly from many of the agencies that comprise CFIUS, including the Department of the Treasury, which has the lead role in implementing Exon-Florio, as well as private sector representatives.

In late January 2006 congressional offices became aware of the proposed acquisition of terminal operations at a number of U.S. maritime ports by Dubai Ports World, hereafter DPW, an established port operator owned by the government of the Emirate of Dubai. Concern within Congress about a transaction that would transfer control of terminal operations to a company owned by a Persian Gulf emirate through whose financial system funds had been transferred to the terrorists who carried out the September 11, 2001, attacks upon the United States, and that had been a central conduit for nuclear weapons components being smuggled to hostile regimes, provided further impetus for review of the manner in which foreign transactions were being analyzed by CFIUS.

That senior White House officials, and the Secretaries and Deputy Secretaries of the Departments of the Treasury and Homeland Security were unaware of the Dubai Ports World transaction, combined with the fact this transaction was not subjected to a formal investigation in violation of the Byrd amendment, compounded congressional concerns about the nature of the underlying transaction.

In response to congressional criticism related to the DPW case in 2006, CFIUS agencies pledged to address flaws in the CFIUS process identified by Congress. There were 113 transactions filed with CFIUS in 2006, up 74 percent from the previous year. Because companies seek CFIUS consideration voluntarily, this increase reflected greater sensitivity among foreign investors, which in turn may reflect a more aggressive stance from CFIUS. CFIUS conducted seven second-stage investigations, the same number of investigations that had been conducted over the previous five-year period. There was also an increase in the number of companies withdrawing from CFIUS reviews and investigations, which suggests a higher degree of scrutiny: either companies withdrew for the purpose of terminating the underlying transaction or in order to restructure the transaction to address CFIUS concerns.

The number of cases in which CFIUS approved transactions with conditions attached through mitigation agreements also increased. CFIUS has also increased its Congressional outreach, notifying the Congressional leadership and committees of jurisdiction upon completion of CFIUS action on each transaction. Treasury also finally produced the long-overdue quadrennial re-

port on CFIUS-related issues as mandated by the Defense Production Act of 1950.

In response to continued concerns regarding implementation of Exon-Florio, on April 30, 2006, the Committee on Banking, Housing, and Urban Affairs reported an original bill, S. 109-264, which made significant amendments to Section 721 to strengthen the review and oversight process. Senate bill 109-264 passed the Senate on July 26, 2006. On the same day the House passed its own reform legislation, H.R. 5337. No further action occurred on the bills prior to the adjournment of the 109th Congress.

On February 28, 2007, The House once again passed legislation amending section 721 to strengthen the foreign investment review process, H.R. 556—The National Foreign Investment Reform and Strengthened Transparency Act of 2007. On May 16, 2007, the Senate Committee on Banking, Housing and Urban Affairs convened to consider and report an original bill—the Foreign Investment and National Security Act of 2007—Proposed by Chairman CHRISTOPHER J. DODD, working closely with Ranking Member RICHARD SHELBY and drawing upon the extensive work that members of the committee had undertaken on this subject in the 109th Congress.

Let me offer a brief summary of the most important provisions of the bill.

The Foreign Investment and National Security Act of 2007—

Establishes the membership of the Committee on Foreign Investment in the United States, CFIUS, in statute;

Strengthens the role of the Director of National Intelligence, hereafter DNI, by making the DNI an ex-officio member of CFIUS and requiring that the Director undertake a thorough analysis of the transaction with respect to any national security implications, engage the intelligence community, and report the DNI's findings to the committee within 20 days of the commencement of the CFIUS review. Requires the DNI to update CFIUS with any additional relevant intelligence information that becomes available during the course of a review and/or investigation;

Mandates the designation of a lead agency or agencies for each covered transaction, in addition to the Treasury Department, charged with negotiating any mitigation agreement or other conditions to ensure that national security is protected, and for follow-up compliance with the terms of the agreement after the transaction has been approved by CFIUS;

Provides for the 30-day review of covered transactions by CFIUS to determine its effects on national security, and for sign-off at the assistant secretary-level, or above, that there is no threat to national security by the proposed transaction;

Provides for the 45-day investigation of covered transactions that threaten to impair national security, including transactions involving foreign government-owned companies and control of

critical infrastructure, and for sign-off at the Deputy Secretary level that there is no threat to the national security by the proposed transaction;

Provides for certain exceptions for the requirement that a state-owned entity automatically go to the investigation stage if the Secretary or Deputy Secretary of the Treasury, and the equivalent level official in the lead agency, determine after review of the transaction that national security will not be impaired by the transaction;

Requires assessment of a country's compliance with U.S. and multilateral counterterrorism, nonproliferation and export control regimes for acquisitions by state-owned companies in the investigation stage;

Provides authority to the President to suspend or prohibit a covered transaction if there is credible evidence that such transaction threatens to impair U.S. national security;

Provides authority to CFIUS, or the lead agencies acting on behalf of CFIUS, to negotiate, impose and enforce conditions necessary to mitigate any threat to national security related to a covered transaction;

Adds to the list of factors that CFIUS should consider in the conduct of its reviews and investigation to include among other things consideration of the potential impact of a transaction on critical infrastructure, energy assets, or critical technologies;

Provides for written notice, to the Congress at the conclusion of the CFIUS process for both reviews and investigations, providing details about the transaction, including written assurance that the transaction does not threaten to impair national security or that any initial concerns have been mitigated through binding agreements between the parties and CFIUS, or the lead agency or agencies designated by the Chairman of CFIUS;

Provides for detailed annual reports to Congress on the activities of CFIUS, including information concerning the transactions that have been reviewed or investigated during the previous 12 months;

Provides for an investigation by the Inspector General of the Department of Treasury to determine why the department failed to comply with provisions of the Defense Production Act with respect to certain reporting requirements related to potential industrial espionage or coordinated strategies by foreign parties with respect to U.S. critical technology by foreign parties; and

Provides for the issuance of regulations and guidance to carry out the provisions of the Act.

Madam President, Ranking Member RICHARD SHELBY and I believe that Senate passage of S. 1610 as amended by the Dodd/Shelby substitute amendment, which is largely technical in nature, will not only implement needed reforms and thereby strengthen national security, but also provide more transparency and predictability to the CFIUS process that is important to en-

suring that the U.S. economy continues to benefit from the fruits of foreign direct investment. We strongly urge our colleagues to support this important legislation.

Mr. SHELBY. Madam President, I rise in support of the Senate's passage of the Foreign Investment and National Security Act of 2007. This important bill reforms the process through which the Committee on Foreign Investment in the United States reviews foreign investment in our country. It establishes a process for reviewing foreign investment transactions that thoroughly examines issues relating to national security, involves clear lines of responsibility, and is flexible to meet the demands of the market.

I appreciate the leadership and hard work of Chairman DODD on this matter.

LABOR MANAGEMENT RIGHTS

Mr. CRAIG. Madam President, I rise today to commend Chairman DODD and Ranking Member SHELBY on their work regarding the Committee on Foreign Investment in the United States, CFIUS.

Last year, a company called Dubai Ports World sought to purchase labor management rights to several U.S. ports, a proposal that was approved by CFIUS. However, numerous Members of Congress, the media and the American public quickly and loudly voiced concerns over the way in which the CFIUS process had occurred. Because of the enormous outcry, Senator SHELBY, then Chairman of the Banking Committee, worked with then-Ranking Member Senator Sarbanes, to make the CFIUS process more transparent and much more effective.

I want to commend both Senators for their work on this legislation, and I believe that their hard work has produced legislation that will bolster American support for foreign investments.

Many different agencies within the Federal Government have the responsibility to investigate foreign investment proposals before they can be approved. Those agencies, including our intelligence community, have a serious responsibility to ensure that each proposed foreign investment in our country will not jeopardize national security. It is my understanding that currently, the Director of National Intelligence has the authority to tap any of the intelligence agencies within our Federal Government to conduct analysis of technology transfers and economic impacts of any foreign investment proposals. Senator SHELBY, is that your understanding of the responsibilities held by the Director of National Intelligence?

Mr. SHELBY. The Senator is correct. Currently the DNI can use different intelligence agencies to conduct economic analysis, including technology transfers, to ensure that such foreign investment proposals will not jeopardize our national security.

Mr. CRAIG. I thank the Senator. Madam President, the reason I bring up

that concern is that I do not believe that such analyses are occurring, or that very little economic analysis is being conducted by our intelligence communities.

I am hopeful that this legislation crafted by Senators SHELBY and DODD will pass the Senate quickly and that it can be signed into law, because America should be a country that welcomes foreign investment. However, we must be absolutely certain that any investment into our country will not have a negative economic impact or impair our national security. I sincerely hope that the Director of National Intelligence will participate fully in the CFIUS process and use all available resources to ensure that all foreign investment proposals receive very thorough and timely analysis to ensure congressional and public support for increased investment in our country, while at the same time ensure our national security is not placed in jeopardy.

Again, I would like to commend the chair and ranking member of the Senate Banking Committee for their hard work and dedication to this legislation and I will strongly support its passage.

Mr. REID. Madam President, I ask unanimous consent that a Dodd-Shelby substitute amendment, which is at the desk, be agreed to, the bill, as amended, be read the third time; further, I ask unanimous consent that the Banking Committee be discharged from the consideration of H.R. 556, and the Senate proceed to its consideration; that all after the enacting clause be stricken, and the text of S. 1610, as amended, be inserted in lieu thereof; the bill, as amended, be read the third time and passed, and the motions to reconsider be laid upon the table, without any intervening action or debate; that S. 1610 be placed back on the calendar; that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2002) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill (H.R. 556), as amended, was read the third time and passed.

PASSPORT BACKLOG REDUCTION ACT OF 2007

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 239, S. 966.

The PRESIDING OFFICER. The clerk will state the bill by title.

The bill clerk read as follows:

A bill (S. 966) to enable the Department of State to respond to a critical shortage of passport processing personnel, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Foreign Relations, with an amendment, as follows: