

NATIONAL SECURITY FOREIGN INVESTMENT REFORM
AND STRENGTHENED TRANSPARENCY ACT OF 2007

FEBRUARY 23, 2007.—Ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
Services, submitted the following

R E P O R T

[To accompany H.R. 556]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 556) 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.

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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 “National Security Foreign Investment Reform and Strengthened Transparency Act of 2007”.

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.

“(5) CLARIFICATION.—The term ‘national security’ shall be construed so as to include those issues relating to ‘homeland security’, including its application to critical infrastructure.

“(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 the effects of the transaction on the national security of the United States.

“(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, in consultation with the Vice Chairpersons, of the Committee.

“(iii) CONTINUING DISCUSSIONS.—The approval of a withdrawal request under clause (ii) shall not be construed as precluding any party to the covered transaction from continuing informal discussions with the Committee or any Committee member regarding possible resubmission for review pursuant to this paragraph.

“(D) UNILATERAL INITIATION OF REVIEW.—Subject to subparagraph (F), the President, the Committee, or any member acting on behalf 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).

“(F) LIMIT ON DELEGATION OF CERTAIN AUTHORITY.—The authority of the Committee or any member of the Committee to initiate a review under subparagraph (D) may not be delegated to any person other than the Deputy Secretary or an appropriate Under Secretary of the department or agency represented on the committee or by such member (or by a person holding an equivalent position to a Deputy Secretary or Under Secretary).

“(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;

“(ii) a roll call vote pursuant to paragraph (3)(A) in connection with a review under paragraph (1) of any covered transaction results in at least 1 vote by a Committee member against approving the transaction; or

“(iii) the Director of National Intelligence identifies particularly complex intelligence concerns that could threaten to impair the national security of the United States and Committee members were not able to develop and agree upon measures to mitigate satisfactorily those threats 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.

“(C) EXCEPTION.—Notwithstanding subparagraph (A)(i)(II), an investigation of a foreign government-controlled transaction shall not be required under this paragraph if the Secretary of the Treasury, the Secretary of Homeland Security, and the Secretary of Commerce determine, on the basis of the review of the transaction under paragraph (1), that the transaction will not affect the national security of the United States and no agreement or condition is required, with respect to the transaction, to mitigate any threat to the national security (and such authority of each such Secretary may not be delegated to any person other than the Deputy Secretary of the Treasury, of Homeland Security, or of Commerce, respectively).

“(3) APPROVAL OF CHAIRPERSON AND VICE CHAIRPERSONS 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 results of such review or investigation are approved by a majority of the members of the Committee in a roll call vote and signed by the Secretary of the Treasury, the Secretary of Homeland Security, and the Secretary of Commerce (and such authority of each such Secretary may not be delegated to any person other than the Deputy Secretary or an appropriate Under Secretary of the Treasury, of Homeland Security, or of Commerce, respectively).

“(B) ADDITIONAL ACTION REQUIRED IN CERTAIN CASES.—In the case of any roll call vote pursuant to subparagraph (A) in connection with an investigation under paragraph (2) of any foreign government-controlled transaction in which there is at least 1 vote by a Committee member against approving the transaction, the investigation shall not be treated as final or complete until the findings and report resulting from such investigation are signed by the President (in addition to the Chairperson and the Vice Chairpersons of the Committee under subparagraph (A)).

“(C) PRESIDENTIAL ACTION REQUIRED IN CERTAIN CASES.—In the case of any covered transaction in which any party to the transaction is—

“(i) a person of a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), section 40 of the Arms Export Control Act, section 620A of the Foreign Assistance Act of 1961, or other provision of law, is a government that has repeatedly provided support for acts of international terrorism;

“(ii) a government described in clause (i); or

“(iii) person controlled, directly or indirectly, by any such government,

a review or investigation under this subsection of such covered transaction shall not be treated as final or complete until the results of such review or investigation are approved and signed by the President.

“(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 making requests 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. The Director of National Intelligence also shall seek and incorporate the views of all affected or appropriate intelligence agencies.

“(B) TIMING.—The Director of National Intelligence shall be provided adequate time to complete the analysis required under subparagraph (A), including any instance described in paragraph (2)(A)(iii).

“(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) SUBMISSION OF ADDITIONAL INFORMATION.—No provision of this subsection shall be construed as prohibiting any party to a covered transaction from 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.

“(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.
- “(N) Any other designee of the President from the Executive Office of the President.

“(3) CHAIRPERSON; VICE CHAIRPERSONS.—The Secretary of the Treasury shall be the Chairperson of the Committee. The Secretary of Homeland Security and the Secretary of Commerce shall be the Vice Chairpersons 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, after consulting with the Vice Chairpersons, 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 2008, 2009, 2010, and 2011 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 second 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:

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

“(1) MITIGATION.—

“(A) IN GENERAL.—The Committee or any agency designated by the Chairperson and Vice Chairpersons may, on behalf of the Committee, 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 that arises as a result of the transaction.

“(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 1 or more appropriate Federal departments or agencies, other than any entity of the intelligence community (as defined in the National Security Act of 1947), as a lead agency to carry out, on behalf of the Committee, 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 1 or more Federal departments or agencies as the lead agency to negotiate, modify, monitor, and enforce, on behalf of the Committee, 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.—Each 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 and Vice Chairpersons 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.—Any 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 and Vice Chairpersons 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 or a Vice 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 Foreign Affairs, 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 a Vice Chairperson (or such other person as the Chairperson or a Vice 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) 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) 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 July 31 of each year on all the reviews and investigations of covered transactions completed under subsection (b) during the 12-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 completed 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 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 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) STUDY AND REPORT.—

(1) STUDY REQUIRED.—Before the end of the 120-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce, shall conduct a study on investments in the United States, especially investments in critical infrastructure and industries affecting national security, by—

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

(B) foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which do not ban organizations designated by the Secretary of State as foreign terrorist organizations.

(2) REPORT.—Before the end of the 30-day period beginning upon completion of the study under paragraph (1) or in the next annual report under section 721(m) of the Defense Production Act of 1950 (as added by subsection (b)), the Secretary of the Treasury shall submit a report to the Congress, for transmittal

to all appropriate committees of the Senate and the House of Representatives, containing the findings and conclusions of the Secretary with respect to the study, together with an analysis of the effects of such investment on the national security of the United States and on any efforts to address those effects.

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, by a party to a covered transaction, to the President or the President’s designee under this section and regulations prescribed under such section, and any information submitted by any such party in connection with any action for which a report is required pursuant to paragraph (3)(B)(ii) of subsection (l) 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 information certifying that, to the best of the person’s knowledge and belief—

“(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.—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.”.

SEC. 11. EFFECTIVE DATE.

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

PURPOSE AND SUMMARY

H.R. 556, the “National Security Foreign Investment Reform and Strengthening Transparency Act of 2007” (“National Security FIRST”) strengthens national security and promotes a policy of openness toward foreign investment. The bill clarifies and provides a statutory basis for the process by which the Federal government reviews foreign investments in the United States for their national security implications. The bill, introduced January 18, 2007, makes a number of reforms to Section 721 of the Defense Production Act of 1950 (DPA)—the so-called Exon-Florio amendment to the DPA—improving a review process that has existed in various iterations since 1975.

The legislation improves accountability for the process within the Administration and to Congress, and codifies the existence of the Committee on Foreign Investment in the United States (CFIUS), adding the Secretaries of Commerce and Homeland Security as vice chairmen of the interagency review panel.

It establishes clear and transparent processes for examining proposed investment, designing and monitoring arrangements to miti-

gate any threat to national security short of refusing the transaction, and reporting to Congress regularly and clearly on CFIUS actions so that Congress can perform its necessary oversight.

The bill addresses apparent voids in the current examination process—for example, establishing monitoring and interim security measures if a transaction is withdrawn from the examination process, even temporarily—and ensures that transactions may only be considered approved after the chairman and vice chairmen of CFIUS sign off.

Additionally, addressing what many in Congress view as a potential misreading of Congressional intent in the so-called “Byrd amendment” to Exon-Florio, the bill ensures that transactions involving companies controlled by foreign governments will receive heightened scrutiny by CFIUS.

The bill changes current practice, ensuring that a list of factors that currently “may” be considered while examining a proposal, in the future “shall” be considered, and adds security threats to critical infrastructure as a factor to be considered.

Finally, the bill adds a formal analysis of every proposed transaction, to be performed by the Director of National Intelligence, but makes clear that the director has no policy role in the examination process, and makes appropriate provision for protection of classified and proprietary business information related to a transaction.

BACKGROUND AND NEED FOR LEGISLATION

CFIUS History and Procedures. Formed under a 1975 executive order to monitor U.S. policy on foreign direct investments, the Committee on Foreign Investment in the United States is an inter-agency committee chaired by the Department of the Treasury. Other participating agencies are the Department of Commerce; Department of State; Department of Homeland Security; Department of Defense; Department of Justice; National Security Council; Council of Economic Advisors; Office of Management & Budget; Office of Science and Technology Policy; U.S. Trade Representative; National Economic Council; and Council of Economic Advisors. In 1988, as part of the Omnibus Trade Act, Congress passed the Exon-Florio amendment to the Defense Production Act of 1950. Under Exon-Florio, the President is authorized to suspend or prohibit foreign acquisitions of U.S. companies if the foreign controlling interest might threaten national security. The President delegated the Exon-Florio investigative authority to CFIUS.

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 are identified.

During the standard review period, the CFIUS responds to the requesting company within 30 days after each CFIUS component agency has reviewed the proposed transaction. In practice, companies often “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. Therefore, while the vast majority of CFIUS transactions are approved by the end of the 30-day review, the total time devoted to a transaction is often much longer.

The 30-day review period is equal to the antitrust review period under the Hart-Scott-Rodino Anti-Trust Improvements Act procedures. This equivalence is important in ensuring that foreign investors are not subjected to disparate treatment relative to their domestic competitors in the vast majority of cases where the foreign investment does not pose significant national security concerns and any concerns are addressed through mitigation agreements within the 30-day period.

If national security concerns have not been resolved during the 30-day review, the transaction is subject 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 and the companies withdraw from investigation and immediately re-file.

Mitigation agreements, which are contracts with CFIUS 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 has for many years used various types of mitigation agreements to address the impact of foreign ownership and control over companies that have classified contracts with the Pentagon. In recent years, the Departments of Justice and Homeland Security have also increasingly relied on mitigation agreements.

Of necessity, the reviews and investigations, which contain classified evaluations of national security vulnerabilities as well as extensive proprietary business information, are conducted in secret. 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 (31 CFR 800.601(e)) to reopen 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 de-

nied a contract going forward is a powerful tool that the government has at its disposal.

Finally, and exclusive of any powers derived from the Exon-Florio amendment or related regulations or executive orders, the President ultimately reserves the right in any transaction and at any time to reverse a transaction for national security purposes. This authority derives both from the International Emergency Economic Powers Act and his inherent powers in the conduct of foreign affairs. Although interventions by the President would be extraordinary, they do provide an ultimate backstop against national security threats that might arise despite a CFIUS review and approval.

Concerns about CFIUS. In January of 2006, CFIUS approved Dubai Ports World's (DPW) purchase of management operations at major U.S. ports. In the face of strong congressional opposition, the Dubai government-owned company agreed to sell its U.S. port interests, but the episode brought to light a number of shortcomings in the CFIUS process. The Financial Services Committee examined these issues during hearings on March 1, April 27, and May 17, 2006, and February 7, 2007.

The Committee has relied on expert testimony from public and private officials to assess concerns about CFIUS policies and procedures. Some of those concerns were examined in a report by the Government Accountability Office (GAO) released in September 2005 and subsequent reporting contained in the January 2007 "High Risk Series" update. The GAO expressed concern about a lack of coordination in assessing security threats, an overly narrow working definition of national security, the lack of clear and consistent procedures for monitoring transactions that have been withdrawn from CFIUS, and the lack of adequate reporting to Congress on CFIUS activities.

A concern raised by the ports transaction was that the CFIUS approval at the end of a 30-day review did not appear to give the transaction, involving Dubai Ports World, a company controlled by a foreign government, the heightened scrutiny that such transactions are supposed to receive according to the provisions of the so-called "Byrd Amendment". Critics suggested that appropriate scrutiny would necessitate a second stage investigation.

The ports case also raised concerns about the level of seniority at which key CFIUS decisions were being made, particularly for cases involving companies controlled by foreign governments. The Committee determined in its hearings that senior level agency officials participating in the CFIUS process only learned of the transaction and the CFIUS approval of it after the fact through media reports.

Finally, the ports case revealed a serious deficiency in CFIUS reporting to Congress. Because the formal CFIUS procedures only require reporting to Congress when a case has gone to the President at the end of an investigation, the lack of virtually any such cases has meant almost no communications to Congress from CFIUS. The problem was compounded by the failure of the Treasury Department to produce a congressionally-mandated quadrennial report on changes in the nature of foreign investment in the United States.

In response to Congressional and public criticism related to the DPW case in 2006, CFIUS agencies pledged to address flaws in the

CFIUS process identified by Congress. Overall statistics and public disclosures of the terms attached to the approval of particular transactions suggest that CFIUS operations have changed since the DPW case. There were 113 transactions filed with CFIUS in 2006, up 74 percent from the previous year—because companies seek CFIUS consideration voluntarily, this increase reflects greater sensitivity among foreign investors, which in turn may reflect a more aggressive stance from CFIUS. CFIUS conducted seven second-stage investigations, which equaled the number of such investigations in the prior five years combined. 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. It is unclear whether the overall level of conditions imposed in these agreements has increased, but foreign investment advocates have expressed concern about what they've described as an unprecedented level of restrictiveness in a number of cases involving private companies from European countries.

Finally, CFIUS has increased its communications with Congress. CFIUS agencies now notify Congressional leadership and committees of jurisdiction upon completion of CFIUS action on each transaction, and CFIUS agencies provide quarterly briefings to the committees of jurisdiction. Treasury also delivered the long-overdue quadrennial report on CFIUS-related issues to Congress as required under the Defense Production Act of 1950.

Despite these changes after the DPW case, CFIUS has not fully addressed key problems identified by Congress. Key concerns raised by the DPW case included a lack of senior-level involvement in CFIUS decision-making, failures in communications to Congress, and ambiguity in the standards by which CFIUS determines the need for second-stage investigations as well as in the procedures for seeking, monitoring, and enforcing mitigation agreements. The Committee believes that passage of H.R. 556 will not only implement needed reforms that will strengthen national security, but will also return the certainty and predictability to the CFIUS process that legitimate foreign investors are seeking. The Committee also believes that passage of the legislation will help to address concerns regarding retaliatory actions on the part of other countries with regard to the treatment of investments from the United States.

The Legislation. The problems identified by the Financial Services Committee in 2006 were first addressed in a bipartisan reform bill, H.R. 5337, which was approved by the Committee and passed by a unanimous vote (424–0) in the House of Representatives in 2006. The Senate approved its own CFIUS reform bill, but the two bills were not reconciled before the end of the 109th Congress.

In the 110th Congress, on January 18, 2007, Rep. Carolyn Maloney reintroduced the legislation that passed the House in 2006. The text of H.R. 556 as introduced was identical to H.R. 5337 as it was passed in 2006. The Committee held a hearing on H.R. 556 on February 7, 2007, and received input on the bill from the

Administration, national security experts, and representatives from the foreign investment community. These witnesses suggested a number of changes to the bill, some of which were addressed in a manager's amendment to the bill, which was agreed to when the Committee marked up H.R. 556 on February 13, 2007.

H.R. 556, the National Security FIRST Act of 2007, seeks to address legitimate concerns about CFIUS procedures and policies, while also providing statutory clarity so that any uncertainty that might adversely affect the U.S. investment climate is addressed. It creates a "regular order" process by which all transactions that have been temporarily withdrawn from CFIUS are closely monitored and establishes a clear process by which any potential security issues could be addressed along with a clear and permanent process of post-transaction monitoring. The bill seeks to increase Administration accountability, make it far easier for Congress to perform its necessary oversight of the CFIUS process, better protect classified and proprietary business information involved in the examination process—all without creating any unnecessary new barriers to normal investment in the United States. The bill envisions a process in which a threat analysis would be conducted by the Director of National Intelligence (DNI)—who would not be a member of CFIUS and who would play no policy role—and decisions made in such a way that no individual CFIUS member's concerns might be masked or ignored. Additionally, the CFIUS chairman and vice-chairmen (or their deputies or appropriate under secretaries) are required to sign all CFIUS decisions, ensuring that while the review or investigation process remains objective, there is a clear and direct senior-level responsibility for CFIUS decisions. The Committee specifically requires that the DNI make requests for information from the Office of Foreign Assets Control and the Financial Crimes Enforcement Network, to determine any terrorism, sanction or financial crime nexus with funding sources or principals in a transaction, and requires the DNI to affirmatively check with all national intelligence sources, particularly the Defense Intelligence Agency, and incorporate any pertinent information from them in his report to CFIUS.

Regarding the provision outlining the process for the development of the Director of National Intelligence's intelligence analysis, the bill approved by the Committee requires that the DNI be provided "adequate time" in order to complete the intelligence assessment. The Committee expects that the DNI shall do a thorough job of providing CFIUS with intelligence analysis and that, particularly for complex cases, the DNI shall be given adequate time to conduct its analysis. The Committee also expects that CFIUS will consider if all of those concerns have been adequately addressed in a 30-day review, or if a second-stage investigation is necessary. The Committee recognizes that there are a number of transactions every year involving acquisitions by privately-owned companies from the United States' closest allies for which the DNI will be able to complete its analysis in short order relative to more complex cases, particularly if CFIUS frequently has previously reviewed and approved transactions from those acquirers.

The legislation 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 any filing with the CFIUS or an intentional material breach in any post-transaction 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 unwinding of any transaction at any time.

The bill establishes a mechanism by which CFIUS can unilaterally reopen a transaction that had previously been approved. The Committee believes this is an appropriate and important tool for CFIUS, which will only be used in exceptional circumstances. The bill requires important procedural safeguards to ensure that this tool is not abused—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.

H.R. 556 makes clear that national security encompasses national security threats to critical U.S. infrastructure, including energy-related infrastructure. The Committee expects that acquisitions of U.S. energy companies or assets by foreign governments or companies controlled by foreign governments—including any instance in which such foreign government has used energy assets to interfere with or influence policies or economic conditions in other countries in ways that threaten the national security of those countries—will be reviewed closely for their national security impact. If such acquisitions raise legitimate concerns about threats to U.S. national security, appropriate protections as set forth in the statute should be instituted including potentially the prohibition of the transaction.

The Committee expects, however, that such determinations will be objective, based upon criteria that are reasonably related to protecting the security of the United States while encouraging and respecting a general policy of openness toward foreign investment, a policy that is reflected in various international agreements to which the United States and other countries are parties. The Committee notes that the carefully prescribed and focused CFIUS procedures enshrined in this legislation stand in stark contrast to actions taken by some foreign governments, where expropriations of assets, often in the energy sector, have occurred arbitrarily, without justification, and without recompense for U.S. investors. The Committee rejects in the strongest possible terms any suggestion that CFIUS reforms contained in H.R. 556 represent a mistreatment of foreign investors and that there is equivalence between CFIUS reform efforts and the actions of foreign governments that violate international agreements on the treatment of foreign investors or otherwise seek to close broad sectors of their economies to foreign investment for purposes unrelated to national security. The Committee will continue in its long-standing efforts to seek to ensure that U.S. investors are treated fairly in foreign markets and that foreign governments honor their commitments in international agreements.

The Committee expects that CFIUS will consider all aspects of a covered transaction to determine if the investment threatens to

impair national security. The participation by foreign governments or companies in an embargo, boycott, or blockade of vital allies of the United States, such as Israel, or the failure of foreign governments to ban groups the Department of State designates as foreign terrorist organizations, may have an impact on U.S. national security, and the Committee believes these factors should be considered as evidence that the transaction may threaten U.S. national security.

In this regard, the Committee believes that CFIUS will need to assess whether a party to a transaction before CFIUS is directly implicated by the actions of its government in these areas—if, for example, a party to a transaction participates directly in the boycott of a U.S. ally, or if a party is controlled to some degree by a government that has failed to ban groups designated as terrorist organizations. The Committee believes that affirmative requests by the Director of National Intelligence for information from the Treasury Department's Office of Foreign Assets Control, as required by this Act for every covered transaction, will make clear in the future such connections in any investment proposals. However, the Committee is concerned about a general lack of knowledge about the investments in the United States by state-owned or state-controlled companies that are from governments that participate in the boycott of Israel or that decline to ban terrorist organizations. The Committee therefore requires in this Act that CFIUS report within six months of enactment on all such investments, with such report also to include any recommendations from CFIUS members on how the government should consider and treat any future proposed investment in the United States by such governments or persons.

The legislation establishes a system of briefings and annual reporting to Congress. Both in briefings and reporting, the Committee recognizes that, in addition to the committees of jurisdiction named in the legislation, CFIUS will be obligated to brief, and report to, other committees that have "jurisdiction over any aspect of" the covered transactions which are the subject of the briefing and/or reporting.

H.R. 556 establishes procedures for the creation, implementation, and monitoring of mitigation agreements. The Committee believes that mitigation agreements play a critical role in the CFIUS process, allowing CFIUS to fully address security concerns without resorting to an outright rejection of the transaction when concerns arise. The Committee believes that mitigation agreements should address national security threats that arise as a result of the covered transaction, when those threats can not be adequately addressed by other areas of law or regulation. The Committee believes that an important principle in the original Exon-Florio Amendment with respect to Presidential action should also apply to mitigation agreements. Specifically, mitigation agreements should not be considered the first line of defense in addressing general national security concerns and should be focused on threats that arise directly from the transaction when other areas of law or regulation can not adequately mitigate those threats.

The legislation addresses a key area of concern arising in the Dubai Ports World case—the apparent lack of heightened scrutiny applied to a case involving foreign government control. H.R. 556 re-

quires heightened scrutiny in two ways. It requires either a second stage investigation for such transactions, or a Deputy Secretary level certification that the transaction poses no threat to national security. The Committee believes that acquisitions by certain government-owned companies do create heightened national security concerns, particularly where government-owned companies make decisions for inherently governmental—as opposed to commercial—reasons. For example, government ownership may create greater concern over espionage risks, the protection of critical U.S. resources, and access to sensitive data. But not all government acquisitions create the same degree of national security risk. Many foreign governments have pension funds that operate in many respects like CalPERS and other public pension funds in various states in the United States, and the Committee is not aware of any national security concerns associated with such entities making investments in the United States.

This bill recognizes these differences by providing flexibility for the Executive branch to distinguish between foreign government investments. If a transaction by a state-owned entity both presents no threat to national security and no new mitigation agreement is required for the transaction, CFIUS has the flexibility to approve the transaction within the initial 30 days, subject to the procedural restrictions mentioned above. The Committee believes this flexibility is important in allowing CFIUS to focus its resources and efforts on the cases involving foreign governments that truly raise national security concerns.

HEARINGS

In addition to multiple hearings in 2006, the Committee on Financial Services held a hearing on February 7, 2007, entitled “The Committee on Foreign Investment in the United States (CFIUS), One Year After Dubai Ports World.” Witnesses at the hearing were Clay Lowery, Assistant Secretary, U.S. Department of the Treasury; The Honorable Steve Bartlett, CEO, Financial Services Roundtable; Todd Malan, CEO, Organization for International Investment; Michael O’Hanlon, The Brookings Institution; David Marchick, Covington & Burling LLP; Robert Nichols, President, Financial Services Forum; and David Heyman, Director, Homeland Security Program, Center for Strategic & International Studies.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on February 13, 2007, and ordered H.R. 556, as amended, favorably reported to the House by a voice vote.

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. A motion by Mr. Frank of Massachusetts to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote. The following amendment was disposed of by a record vote. The names of Members voting for and against follow:

An amendment by Mr. Price of Georgia, No. 1a, to the amendment in the nature of a substitute, requiring Presidential action in certain cases was agreed to by a record vote of 40 yeas and 29 nays (Record vote FC-4):

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------|-----|-----|---------|------------------|-----|-----|---------|
| Mr. Frank | | X | | Mr. Bachus | X | | |
| Mr. Kanjorski | | X | | Mr. Baker | | | |
| Ms. Waters | | X | | Ms. Pryce (OH) | X | | |
| Mrs. Maloney | | X | | Mr. Castle | X | | |
| Mr. Gutierrez | | X | | Mr. King (NY) | X | | |
| Ms. Velázquez | | X | | Mr. Royce | X | | |
| Mr. Watt | | X | | Mr. Lucas | X | | |
| Mr. Ackerman | X | | | Mr. Paul | X | | |
| Ms. Carson | | X | | Mr. Gillmor | X | | |
| Mr. Sherman | | X | | Mr. LaTourette | X | | |
| Mr. Meeks | | X | | Mr. Manzullo | | X | |
| Mr. Moore (KS) | | X | | Mr. Jones | X | | |
| Mr. Capuano | | X | | Mrs. Biggert | X | | |
| Mr. Hinojosa | | X | | Mr. Shays | X | | |
| Mr. Clay | | X | | Mr. Miller (CA) | X | | |
| Mrs. McCarthy | | X | | Mrs. Capito | X | | |
| Mr. Baca | | X | | Mr. Feeney | X | | |
| Mr. Lynch | | X | | Mr. Hensarling | X | | |
| Mr. Miller (NC) | | X | | Mr. Garrett (NJ) | X | | |
| Mr. Scott | | X | | Ms. Brown-Waite | X | | |
| Mr. Green | | X | | Mr. Barrett (SC) | X | | |
| Mr. Cleaver | | X | | Mr. Renzi | X | | |
| Ms. Bean | | X | | Mr. Gerlach | X | | |
| Ms. Moore (WI) | | X | | Mr. Pearce | X | | |
| Mr. Davis (TN) | | X | | Mr. Neugebauer | X | | |
| Mr. Sires | X | | | Mr. Price (GA) | X | | |
| Mr. Hodes | X | | | Mr. Davis (KY) | X | | |
| Mr. Ellison | | X | | Mr. McHenry | X | | |
| Mr. Klein | | X | | Mr. Campbell | X | | |
| Mr. Mahoney (FL) | X | | | Dr. Putnam | X | | |
| Mr. Wilson | X | | | Mrs. Blackburn | X | | |
| Mr. Perlmutter | X | | | Mrs. Bachmann | X | | |
| Mr. Murphy | | X | | Mr. Roskam | X | | |
| Mr. Donnelly | X | | | | | | |
| Mr. Wexler | | X | | | | | |
| Mr. Marshall | X | | | | | | |
| Mr. Boren | X | | | | | | |

The following other amendment was also considered by the Committee:

An amendment in the nature of a substitute by Mr. Frank of Massachusetts, No. 1, making various substantive and technical changes to the bill, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Committee on Foreign Investment in the United States shall adopt the procedures set forth in this Act, and begin filing such notices and reports to Congress and doing such post-transaction mon-

itoring as called for in this Act, in a timely fashion. The Committee intends that the procedures set forth in this Act apply to all covered transactions henceforth, except that those covered transactions under review or investigation by the CFIUS on the day before the effective date shall be considered using the practices and procedures in place the day before enactment. Such transactions as are under review or investigation on the effective date, however, are subject to all post-transaction monitoring and other procedures as set forth in this Act, and all other portions of this Act shall apply to such transactions except the procedures for initial review or investigation.

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 adopts as its own the estimate of new budget authority, entitlement authority, tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

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:

FEBRUARY 16, 2007.

Hon. BARNEY FRANK, *Chairman,*
Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 556, the National Security Foreign Investment Reform and Strengthened Transparency Act of 2007.

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

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 556—National Security Foreign Investment Reform and Strengthened Transparency Act of 2007

Summary: H.R. 556 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 at least 13 members (including seven cabinet secretaries). In addition, the legislation would authorize the appropriation of \$10 million annu-

ally over the 2008–2011 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. 556 would cost \$40 million over the 2008–2012 period. In addition, beginning in fiscal year 2007, 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. Enacting the bill would not affect direct spending or revenues.

H.R. 556 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. 556 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 | 2012 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Authorization Level ¹ | 0 | 10 | 10 | 10 | 10 | 0 |
| Estimated Outlays | 0 | 9 | 10 | 10 | 10 | 1 |

¹ In addition, beginning in fiscal year 2007, 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. 556 will be enacted this fiscal year, that the necessary amounts will be appropriated for each year, and that outlays will occur at historical rates for similar programs.

H.R. 556 would establish in law the CFIUS. Under the bill, the committee would consist of at least 13 permanent members including the Secretaries of the Departments of the Treasury, State, Defense, Energy, Commerce, and Homeland Security; as well as the Attorney General, Director of the Office of Management and Budget, the United States Trade Representative, the Chairman of the Council of Economic Advisers, 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 committee would coordinate reviews of foreign investment in the United States that involve national security or critical infrastructure in the United States. The legislation would formalize and expand this review and investigation process.

The legislation would authorize the appropriation of \$10 million annually over the 2008–2011 period for the operations of the committee. Assuming the appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$40 million over the 2008–2012 period.

In addition, beginning in fiscal year 2007, 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 2007–2012 period, however, 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. 556 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Sarah Puro; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy 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 of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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.

EARMARK IDENTIFICATION

H.R. 556 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON FOREIGN AFFAIRS,
 Washington, DC, February 23, 2007.

Hon. BARNEY FRANK,
 Chairman, Committee on Financial Services,
 House of Representatives, Washington, DC.

DEAR CHAIRMAN FRANK: I am writing to you concerning the bill, H.R. 556, the National Security Foreign Investment Reform and Strengthened Transparency Act of 2007. There are certain provisions in the legislation which fall within the Rule X jurisdiction of the Committee on Foreign Affairs, including provisions relating to the Defense Production Act of 1950, as it pertains to the Committee on Foreign Investment in the United States.

In the interest of permitting your Committee to proceed expeditiously to floor consideration of this important bill, I am willing to waive this Committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill, the Committee on Foreign Affairs does not waive any future jurisdictional claim over the subject matters contained in the bill, which fall within its Rule X jurisdiction. I request that you to urge the Speaker to appoint Members of this Committee to any conference committee which is named to consider any such provisions.

Please place this letter into the Committee report on H.R. 556 and into the Congressional Record during consideration of the measure on the House Floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Cordially,

TOM LANTOS,
 Chairman.

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON FINANCIAL SERVICES,
 Washington, DC, February 23, 2007.

Hon. TOM LANTOS, Chairman,
 Committee on Foreign Affairs,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter concerning H.R. 556, the National Security Foreign Investment Reform and Strengthened Transparency Act of 2007. This bill was introduced on January 18, 2007, and was referred to the Committee on Financial Services, and in addition to the Committees on Foreign Affairs and Energy and Commerce. The bill was ordered reported by the Committee on Financial Services on February 13, 2007. It is my expectation that this bill will be scheduled for floor consideration in the near future.

I recognize that certain provisions in the bill fall within the jurisdiction of the Committee on Foreign Affairs under rule X of the Rules of the House of Representatives. However, I appreciate your willingness to forego action on H.R. 556 in order to allow the bill to come to the floor expeditiously. I agree that your decision will not prejudice the Committee on Foreign Affairs with respect to its jurisdictional prerogatives on this or similar legislation. I would

support your request for conferees on those provisions within your jurisdiction should this bill be the subject of a House-Senate conference.

I will include this exchange of correspondence in the Committee report and in Congressional Record when this bill is considered by the House. Thank you again for your cooperation in this important matter.

Yours truly,

BARNEY FRANK,
Chairman.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—This section establishes the short title of the bill as the “National Security Foreign Investment Reform and Strengthened Transparency Act of 2007.”

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

Subsection (a) defines a number of terms used often in the bill: Committee, control, covered transaction, foreign government-controlled transaction. It also clarifies that for the purposes of Section 721, “national security” will be construed to include “homeland security” including its application to critical infrastructure.

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; establishes that any transaction involving a foreign government-controlled company must undergo an “investigation” by CFIUS if that transaction is not certified by the Chairman and Vice Chairmen as posing no national security threat and requiring no mitigation agreement; 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; establishes a procedure for the President and CFIUS to unilaterally initiate a review of a transaction, and to initiate a review of a previously reviewed transaction in certain cases; 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 $\frac{2}{3}$ 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 and vice chairmen of CFIUS sign the resulting reports; 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; requires a Presidential decision in cases involving transactions related to countries that have been designated by the State Department as having provided support for acts of international terrorism; and specifies that the Director of National Intelligence must conduct an analysis of each transaction.

Section 3—This section formally establishes the Committee on Foreign Investment in the United States; establishes its member-

ship; specifies that the Secretary of the Treasury shall be the chairman and the Secretary of Homeland Security and Secretary of Commerce the vice chairs; allows the temporary addition of non-member Executive Branch agencies; establishes guidelines for meeting and gathering information; and authorizes the appropriation of \$10 million annually for the operation of the Committee.

Section 4—This section 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—This section 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—This section establishes that the CFIUS may enter into agreements with parties to a transaction to mitigate any threats to national security; establishes that the CFIUS shall name appropriate lead Federal agencies to monitor compliance with such agreements, negotiate any changes in such agreements and report back to the CFIUS on compliance and modifications; and 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—This section 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 reports to Congress within 5 days after the final action in an investigation; a mechanism for Congress to request a detailed, classified briefing on a transaction; and affirmative protections for proprietary business information. The CFIUS is required to file annual reports with Congress 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, incorporates into the 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—This section makes clear that parties to a transaction must certify that the information they file with CFIUS is complete and correct.

Section 9—This section 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—This section clarifies that no portion of the bill should be construed as affecting or altering other existing law or regulation.

Section 11—This section establishes an effective date 90 days after enactment.

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):

DEFENSE PRODUCTION ACT OF 1950

* * * * *

TITLE VII—GENERAL PROVISIONS

* * * * *

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 for-

eign 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.

(5) *CLARIFICATION.*—The term “national security” shall be construed so as to include those issues relating to “homeland security”, including its application to critical infrastructure.

(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 the effects of the transaction on the national security of the United States.

(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, in consultation with the Vice Chairpersons, of the Committee.

(iii) *CONTINUING DISCUSSIONS.*—The approval of a withdrawal request under clause (ii) shall not be construed as precluding any party to the covered transaction from continuing informal discussions with the Committee or any Committee member regarding possible resubmission for review pursuant to this paragraph.

(D) *UNILATERAL INITIATION OF REVIEW.*—Subject to subparagraph (F), the President, the Committee, or any member acting on behalf 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 in-

formation, 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).

(F) *LIMIT ON DELEGATION OF CERTAIN AUTHORITY.*—The authority of the Committee or any member of the Committee to initiate a review under subparagraph (D) may not be delegated to any person other than the Deputy Secretary or an appropriate Under Secretary of the department or agency represented on the committee or by such member (or by a person holding an equivalent position to a Deputy Secretary or Under Secretary).

(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;

(ii) a roll call vote pursuant to paragraph (3)(A) in connection with a review under paragraph (1) of any covered transaction results in at least 1 vote by a Committee member against approving the transaction; or

(iii) the Director of National Intelligence identifies particularly complex intelligence concerns that could threaten to impair the national security of the United States and Committee members were not able to develop and agree upon measures to mitigate satisfactorily those threats 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.

(C) *EXCEPTION.*—Notwithstanding subparagraph (A)(i)(II), an investigation of a foreign government-controlled transaction shall not be required under this paragraph if the Secretary of the Treasury, the Secretary of Homeland Security, and the Secretary of Commerce determine, on the basis of the review of the transaction under paragraph (1), that the transaction will not affect the national security of the United States and no agreement or condition is required, with respect to the transaction, to mitigate any threat to the national security (and such authority of each such Secretary may not be delegated to any person other than the Deputy Secretary of the Treasury, of Homeland Security, or of Commerce, respectively).

(3) APPROVAL OF CHAIRPERSON AND VICE CHAIRPERSONS 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 results of such review or investigation are approved by a majority of the members of the Committee in a roll call vote and signed by the Secretary of the Treasury, the Secretary of Homeland Security, and the Secretary of Commerce (and such authority of each such Secretary may not be delegated to any person other than the Deputy Secretary or an appropriate Under Secretary of the Treasury, of Homeland Security, or of Commerce, respectively).

(B) *ADDITIONAL ACTION REQUIRED IN CERTAIN CASES.*—In the case of any roll call vote pursuant to subparagraph (A) in connection with an investigation under paragraph (2) of any foreign government-controlled transaction in which there is at least 1 vote by a Committee member against approving the transaction, the investigation shall not be treated as final or complete until the findings and report result-

ing from such investigation are signed by the President (in addition to the Chairperson and the Vice Chairpersons of the Committee under subparagraph (A)).

(C) *PRESIDENTIAL ACTION REQUIRED IN CERTAIN CASES.*—*In the case of any covered transaction in which any party to the transaction is—*

(i) *a person of a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), section 40 of the Arms Export Control Act, section 620A of the Foreign Assistance Act of 1961, or other provision of law, is a government that has repeatedly provided support for acts of international terrorism;*

(ii) *a government described in clause (i); or*

(iii) *person controlled, directly or indirectly, by any such government,*

a review or investigation under this subsection of such covered transaction shall not be treated as final or complete until the results of such review or investigation are approved and signed by the President.

(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 making requests 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. The Director of National Intelligence also shall seek and incorporate the views of all affected or appropriate intelligence agencies.*

(B) *TIMING.*—*The Director of National Intelligence shall be provided adequate time to complete the analysis required under subparagraph (A), including any instance described in paragraph (2)(A)(iii).*

(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) *SUBMISSION OF ADDITIONAL INFORMATION.*—*No provision of this subsection shall be construed as prohibiting any party to a covered transaction from 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.*

(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 or a Vice 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 Foreign Affairs, 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 a Vice Chairperson (or such other person as the Chairperson or a Vice Chairperson may designate) shall provide 1 classified briefing to each House of the Congress from which any such briefing request origi-*

nates 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.*

(N) *Any other designee of the President from the Executive Office of the President.*

(3) CHAIRPERSON; VICE CHAIRPERSONS.—*The Secretary of the Treasury shall be the Chairperson of the Committee. The Secretary of Homeland Security and the Secretary of Commerce shall be the Vice Chairpersons 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, after consulting with the Vice Chairpersons, 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 2008, 2009, 2010, and 2011 expressly and solely for the operations of the Committee that are conducted by the Secretary, the sum of \$10,000,000.

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

(1) *MITIGATION.*—

(A) *IN GENERAL.*—The Committee or any agency designated by the Chairperson and Vice Chairpersons may, on behalf of the Committee, 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 that arises as a result of the transaction.

(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 1 or more appropriate Federal departments or agencies, other than any entity of the intelligence community (as defined in the National Security Act of 1947), as a lead agency to carry out, on behalf of the Committee, 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 1 or more Federal departments or agencies as the lead agency to negotiate, modify, monitor, and enforce, on

behalf of the Committee, 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.—Each 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 and Vice Chairpersons 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.—Any 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 and Vice Chairpersons 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) 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 July 31 of each year on all the reviews and investigations of covered transactions completed under subsection (b) during the 12-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 completed 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 exten-

sion 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 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 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, by a party to a covered transaction, to the President or the President’s designee under this section and regula-

tions prescribed under such section, and any information submitted by any such party in connection with any action for which a report is required pursuant to paragraph (3)(B)(ii) of subsection (l) 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 information certifying that, to the best of the person's knowledge and belief—

(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.

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