

In the Senate of the United States,

June 29, 2007.

Resolved, That the bill from the House of Representatives (H.R. 556) entitled “An Act 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.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. United States security improvement amendments; clarification of review and investigation process.

Sec. 3. Statutory establishment of the Committee on Foreign Investment in the United States.

Sec. 4. Additional factors for consideration.

Sec. 5. Mitigation, tracking, and postconsummation monitoring and enforcement.

Sec. 6. Action by the President.

Sec. 7. Increased oversight by Congress.

Sec. 8. Certification of notices and assurances.

Sec. 9. Regulations.

Sec. 10. Effect on other law.

Sec. 11. Clerical amendments

Sec. 12. Effective date.

1 **SEC. 2. UNITED STATES SECURITY IMPROVEMENT AMEND-**
 2 **MENTS; CLARIFICATION OF REVIEW AND IN-**
 3 **VESTIGATION PROCESS.**

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

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

9 *“(1) COMMITTEE; CHAIRPERSON.—The terms*
 10 *‘Committee’ and ‘chairperson’ mean the Committee on*
 11 *Foreign Investment in the United States and the*
 12 *chairperson thereof, respectively.*

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

16 *“(3) COVERED TRANSACTION.—The term ‘covered*
 17 *transaction’ means any merger, acquisition, or take-*
 18 *over that is proposed or pending after August 23,*
 19 *1988, by or with any foreign person which could re-*
 20 *sult in foreign control of any person engaged in inter-*
 21 *state commerce in the United States.*

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

8 “(5) **CLARIFICATION.**—*The term ‘national secu-*
9 *rity’ shall be construed so as to include those issues*
10 *relating to ‘homeland security’, including its applica-*
11 *tion to critical infrastructure.*

12 “(6) **CRITICAL INFRASTRUCTURE.**—*The term*
13 *‘critical infrastructure’ means, subject to rules issued*
14 *under this section, systems and assets, whether phys-*
15 *ical or virtual, so vital to the United States that the*
16 *incapacity or destruction of such systems or assets*
17 *would have a debilitating impact on national secu-*
18 *rity.*

19 “(7) **CRITICAL TECHNOLOGIES.**—*The term ‘crit-*
20 *ical technologies’ means critical technology, critical*
21 *components, or critical technology items essential to*
22 *national defense, identified pursuant to this section,*
23 *subject to regulations issued at the direction of the*
24 *President, in accordance with subsection (h).*

1 “(8) *LEAD AGENCY.*—*The term ‘lead agency’*
2 *means the agency, or agencies, designated as the lead*
3 *agency or agencies pursuant to subsection (k)(5) for*
4 *the review of a transaction.*

5 “(b) *NATIONAL SECURITY REVIEWS AND INVESTIGA-*
6 *TIONS.*—

7 “(1) *NATIONAL SECURITY REVIEWS.*—

8 “(A) *IN GENERAL.*—*Upon receiving written*
9 *notification under subparagraph (C) of any cov-*
10 *ered transaction, or pursuant to a unilateral no-*
11 *tification initiated under subparagraph (D) with*
12 *respect to any covered transaction, the President,*
13 *acting through the Committee—*

14 “(i) *shall review the covered trans-*
15 *action to determine the effects of the trans-*
16 *action on the national security of the*
17 *United States; and*

18 “(ii) *shall consider the factors specified*
19 *in subsection (f) for such purpose, as appro-*
20 *priate.*

21 “(B) *CONTROL BY FOREIGN GOVERN-*
22 *MENT.*—*If the Committee determines that the*
23 *covered transaction is a foreign government-con-*
24 *trolled transaction, the Committee shall conduct*

1 *an investigation of the transaction under para-*
2 *graph (2).*

3 “(C) *WRITTEN NOTICE.*—

4 “(i) *IN GENERAL.*—*Any party or par-*
5 *ties to any covered transaction may initiate*
6 *a review of the transaction under this para-*
7 *graph by submitting a written notice of the*
8 *transaction to the Chairperson of the Com-*
9 *mittee.*

10 “(ii) *WITHDRAWAL OF NOTICE.*—*No*
11 *covered transaction for which a notice was*
12 *submitted under clause (i) may be with-*
13 *drawn from review, unless a written request*
14 *for such withdrawal is submitted to the*
15 *Committee by any party to the transaction*
16 *and approved by the Committee.*

17 “(iii) *CONTINUING DISCUSSIONS.*—*A*
18 *request for withdrawal under clause (ii)*
19 *shall not be construed to preclude any party*
20 *to the covered transaction from continuing*
21 *informal discussions with the Committee or*
22 *any member thereof regarding possible re-*
23 *submission for review pursuant to this*
24 *paragraph.*

1 “(D) *UNILATERAL INITIATION OF RE-*
2 *VIEW.—Subject to subparagraph (F), the Presi-*
3 *dent or the Committee may initiate a review*
4 *under subparagraph (A) of—*

5 “(i) *any covered transaction;*

6 “(ii) *any covered transaction that has*
7 *previously been reviewed or investigated*
8 *under this section, if any party to the*
9 *transaction submitted false or misleading*
10 *material information to the Committee in*
11 *connection with the review or investigation*
12 *or omitted material information, including*
13 *material documents, from information sub-*
14 *mitted to the Committee; or*

15 “(iii) *any covered transaction that has*
16 *previously been reviewed or investigated*
17 *under this section, if—*

18 “(I) *any party to the transaction*
19 *or the entity resulting from consumma-*
20 *tion of the transaction intentionally*
21 *materially breaches a mitigation agree-*
22 *ment or condition described in sub-*
23 *section (l)(1)(A);*

24 “(II) *such breach is certified to*
25 *the Committee by the lead department*

1 or agency monitoring and enforcing
2 such agreement or condition as an in-
3 tentional material breach; and

4 “(III) the Committee determines
5 that there are no other remedies or en-
6 forcement tools available to address
7 such breach.

8 “(E) *TIMING.*—Any review under this para-
9 graph shall be completed before the end of the 30-
10 day period beginning on the date of the accept-
11 ance of written notice under subparagraph (C)
12 by the chairperson, or beginning on the date of
13 the initiation of the review in accordance with
14 subparagraph (D), as applicable.

15 “(F) *LIMIT ON DELEGATION OF CERTAIN*
16 *AUTHORITY.*—The authority of the Committee to
17 initiate a review under subparagraph (D) may
18 not be delegated to any person, other than the
19 Deputy Secretary or an appropriate Under Sec-
20 retary of the department or agency represented
21 on the Committee.

22 “(2) *NATIONAL SECURITY INVESTIGATIONS.*—

23 “(A) *IN GENERAL.*—In each case described
24 in subparagraph (B), the Committee shall imme-
25 diately conduct an investigation of the effects of

1 *a covered transaction on the national security of*
2 *the United States, and take any necessary ac-*
3 *tions in connection with the transaction to pro-*
4 *tect the national security of the United States.*

5 “(B) *APPLICABILITY.*—Subparagraph (A)
6 *shall apply in each case in which—*

7 “(i) *a review of a covered transaction*
8 *under paragraph (1) results in a deter-*
9 *mination that—*

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

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

18 “(III) *the transaction would re-*
19 *sult in control of any critical infra-*
20 *structure of or within the United*
21 *States by or on behalf of any foreign*
22 *person, if the Committee determines*
23 *that the transaction could impair na-*
24 *tional security, and that such impair-*
25 *ment to national security has not been*

1 *mitigated by assurances provided or*
2 *renewed with the approval of the Com-*
3 *mittee, as described in subsection (l),*
4 *during the review period under para-*
5 *graph (1); or*

6 *“(ii) the lead agency recommends, and*
7 *the Committee concurs, that an investiga-*
8 *tion be undertaken.*

9 *“(C) TIMING.—Any investigation under*
10 *subparagraph (A) shall be completed before the*
11 *end of the 45-day period beginning on the date*
12 *on which the investigation commenced.*

13 *“(D) EXCEPTION.—*

14 *“(i) IN GENERAL.—Notwithstanding*
15 *subparagraph (B)(i), an investigation of a*
16 *foreign government-controlled transaction*
17 *described in subclause (II) of subparagraph*
18 *(B)(i) or a transaction involving critical*
19 *infrastructure described in subclause (III)*
20 *of subparagraph (B)(i) shall not be required*
21 *under this paragraph, if the Secretary of*
22 *the Treasury and the head of the lead agen-*
23 *cy jointly determine, on the basis of the re-*
24 *view of the transaction under paragraph*

1 (1), that the transaction will not impair the
2 national security of the United States.

3 “(ii) *NONDELEGATION.*—The authority
4 of the Secretary or the head of an agency
5 referred to in clause (i) may not be dele-
6 gated to any person, other than the Deputy
7 Secretary of the Treasury or the deputy
8 head (or the equivalent thereof) of the lead
9 agency, respectively.

10 “(E) *GUIDANCE ON CERTAIN TRANSACTIONS*
11 *WITH NATIONAL SECURITY IMPLICATIONS.*—The
12 Chairperson shall, not later than 180 days after
13 the effective date of the Foreign Investment and
14 National Security Act of 2007, publish in the
15 Federal Register guidance on the types of trans-
16 actions that the Committee has reviewed and
17 that have presented national security consider-
18 ations, including transactions that may con-
19 stitute covered transactions that would result in
20 control of critical infrastructure relating to
21 United States national security by a foreign gov-
22 ernment or an entity controlled by or acting on
23 behalf of a foreign government.

24 “(3) *CERTIFICATIONS TO CONGRESS.*—

1 “(A) *CERTIFIED NOTICE AT COMPLETION OF*
2 *REVIEW.*—*Upon completion of a review under*
3 *subsection (b) that concludes action under this*
4 *section, the chairperson and the head of the lead*
5 *agency shall transmit a certified notice to the*
6 *members of Congress specified in subparagraph*
7 *(C)(iii).*

8 “(B) *CERTIFIED REPORT AT COMPLETION*
9 *OF INVESTIGATION.*—*As soon as is practicable*
10 *after completion of an investigation under sub-*
11 *section (b) that concludes action under this sec-*
12 *tion, the chairperson and the head of the lead*
13 *agency shall transmit to the members of Congress*
14 *specified in subparagraph (C)(iii) a certified*
15 *written report (consistent with the requirements*
16 *of subsection (c)) on the results of the investiga-*
17 *tion, unless the matter under investigation has*
18 *been sent to the President for decision.*

19 “(C) *CERTIFICATION PROCEDURES.*—

20 “(i) *IN GENERAL.*—*Each certified no-*
21 *tice and report required under subpara-*
22 *graphs (A) and (B), respectively, shall be*
23 *submitted to the members of Congress speci-*
24 *fied in clause (iii), and shall include—*

1 “(I) a description of the actions
2 taken by the Committee with respect to
3 the transaction; and

4 “(II) identification of the deter-
5 minative factors considered under sub-
6 section (f).

7 “(ii) *CONTENT OF CERTIFICATION.*—
8 *Each certified notice and report required*
9 *under subparagraphs (A) and (B), respec-*
10 *tively, shall be signed by the chairperson*
11 *and the head of the lead agency, and shall*
12 *state that, in the determination of the Com-*
13 *mittee, there are no unresolved national se-*
14 *curity concerns with the transaction that is*
15 *the subject of the notice or report.*

16 “(iii) *MEMBERS OF CONGRESS.*—*Each*
17 *certified notice and report required under*
18 *subparagraphs (A) and (B), respectively,*
19 *shall be transmitted—*

20 “(I) to the Majority Leader and
21 the Minority Leader of the Senate;

22 “(II) to the chair and ranking
23 member of the Committee on Banking,
24 Housing, and Urban Affairs of the
25 Senate and of any committee of the

1 *Senate having oversight over the lead*
2 *agency;*

3 *“(III) to the Speaker and the Mi-*
4 *nority Leader of the House of Rep-*
5 *resentatives;*

6 *“(IV) to the chair and ranking*
7 *member of the Committee on Financial*
8 *Services of the House of Representa-*
9 *tives and of any committee of the*
10 *House of Representatives having over-*
11 *sight over the lead agency; and*

12 *“(V) with respect to covered trans-*
13 *actions involving critical infrastruc-*
14 *ture, to the members of the Senate from*
15 *the State in which the principal place*
16 *of business of the acquired United*
17 *States person is located, and the mem-*
18 *ber from the Congressional District in*
19 *which such principal place of business*
20 *is located.*

21 *“(iv) SIGNATURES; LIMIT ON DELEGA-*
22 *TION.—*

23 *“(I) IN GENERAL.—Each certified*
24 *notice and report required under sub-*
25 *paragraphs (A) and (B), respectively,*

1 *shall be signed by the chairperson and*
2 *the head of the lead agency, which sig-*
3 *nature requirement may only be dele-*
4 *gated in accordance with subclause*
5 *(II).*

6 “(II) *LIMITATION ON DELEGATION*
7 *OF CERTIFICATIONS.—The chairperson*
8 *and the head of the lead agency may*
9 *delegate the signature requirement*
10 *under subclause (I)—*

11 “(aa) *only to an appropriate*
12 *employee of the Department of the*
13 *Treasury (in the case of the Sec-*
14 *retary of the Treasury) or to an*
15 *appropriate employee of the lead*
16 *agency (in the case of the lead*
17 *agency) who was appointed by the*
18 *President, by and with the advice*
19 *and consent of the Senate, with*
20 *respect to any notice provided*
21 *under paragraph (1) following the*
22 *completion of a review under this*
23 *section; or*

24 “(bb) *only to a Deputy Sec-*
25 *retary of the Treasury (in the case*

1 *of the Secretary of the Treasury)*
2 *or a person serving in the Deputy*
3 *position or the equivalent thereof*
4 *at the lead agency (in the case of*
5 *the lead agency), with respect to*
6 *any report provided under sub-*
7 *paragraph (B) following an inves-*
8 *tigation under this section.*

9 “(4) ANALYSIS BY DIRECTOR OF NATIONAL IN-
10 TELLIGENCE.—

11 “(A) IN GENERAL.—*The Director of Na-*
12 *tional Intelligence shall expeditiously carry out a*
13 *thorough analysis of any threat to the national*
14 *security of the United States posed by any cov-*
15 *ered transaction. The Director of National Intel-*
16 *ligence shall also seek and incorporate the views*
17 *of all affected or appropriate intelligence agen-*
18 *cies with respect to the transaction.*

19 “(B) TIMING.—*The analysis required under*
20 *subparagraph (A) shall be provided by the Direc-*
21 *tor of National Intelligence to the Committee not*
22 *later than 20 days after the date on which notice*
23 *of the transaction is accepted by the Committee*
24 *under paragraph (1)(C), but such analysis may*
25 *be supplemented or amended, as the Director*

1 *considers necessary or appropriate, or upon a re-*
2 *quest for additional information by the Com-*
3 *mittee. The Director may begin the analysis at*
4 *any time prior to acceptance of the notice, in ac-*
5 *cordance with otherwise applicable law.*

6 “(C) *INTERACTION WITH INTELLIGENCE*
7 *COMMUNITY.—The Director of National Intel-*
8 *ligence shall ensure that the intelligence commu-*
9 *nity remains engaged in the collection, analysis,*
10 *and dissemination to the Committee of any addi-*
11 *tional relevant information that may become*
12 *available during the course of any investigation*
13 *conducted under subsection (b) with respect to a*
14 *transaction.*

15 “(D) *INDEPENDENT ROLE OF DIRECTOR.—*
16 *The Director of National Intelligence shall be a*
17 *nonvoting, ex officio member of the Committee,*
18 *and shall be provided with all notices received by*
19 *the Committee under paragraph (1)(C) regard-*
20 *ing covered transactions, but shall serve no pol-*
21 *icy role on the Committee, other than to provide*
22 *analysis under subparagraphs (A) and (C) in*
23 *connection with a covered transaction.*

24 “(5) *SUBMISSION OF ADDITIONAL INFORMA-*
25 *TION.—No provision of this subsection shall be con-*

1 *strued as prohibiting any party to a covered trans-*
2 *action from submitting additional information con-*
3 *cerning the transaction, including any proposed re-*
4 *structuring of the transaction or any modifications to*
5 *any agreements in connection with the transaction,*
6 *while any review or investigation of the transaction*
7 *is ongoing.*

8 “(6) *NOTICE OF RESULTS TO PARTIES.*—*The*
9 *Committee shall notify the parties to a covered trans-*
10 *action of the results of a review or investigation*
11 *under this section, promptly upon completion of all*
12 *action under this section.*

13 “(7) *REGULATIONS.*—*Regulations prescribed*
14 *under this section shall include standard procedures*
15 *for—*

16 “(A) *submitting any notice of a covered*
17 *transaction to the Committee;*

18 “(B) *submitting a request to withdraw a*
19 *covered transaction from review;*

20 “(C) *resubmitting a notice of a covered*
21 *transaction that was previously withdrawn from*
22 *review; and*

23 “(D) *providing notice of the results of a re-*
24 *view or investigation to the parties to the covered*

1 *transaction, upon completion of all action under*
2 *this section.”.*

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

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

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

11 “(1) *ESTABLISHMENT.—The Committee on For-*
12 *ign Investment in the United States, established pur-*
13 *suant to Executive Order No. 11858, shall be a multi*
14 *agency committee to carry out this section and such*
15 *other assignments as the President may designate.*

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

19 “(A) *The Secretary of the Treasury.*

20 “(B) *The Secretary of Homeland Security.*

21 “(C) *The Secretary of Commerce.*

22 “(D) *The Secretary of Defense.*

23 “(E) *The Secretary of State.*

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

1 “(G) *The Secretary of Energy.*

2 “(H) *The Secretary of Labor (nonvoting, ex*
3 *officio).*

4 “(I) *The Director of National Intelligence*
5 *(nonvoting, ex officio).*

6 “(J) *The heads of any other executive de-*
7 *partment, agency, or office, as the President de-*
8 *termines appropriate, generally or on a case-by-*
9 *case basis.*

10 “(3) *CHAIRPERSON.—The Secretary of the Treas-*
11 *ury shall serve as the chairperson of the Committee.*

12 “(4) *ASSISTANT SECRETARY FOR THE DEPART-*
13 *MENT OF THE TREASURY.—There shall be established*
14 *an additional position of Assistant Secretary of the*
15 *Treasury, who shall be appointed by the President, by*
16 *and with the advice and consent of the Senate. The*
17 *Assistant Secretary appointed under this paragraph*
18 *shall report directly to the Undersecretary of the*
19 *Treasury for International Affairs. The duties of the*
20 *Assistant Secretary shall include duties related to the*
21 *Committee on Foreign Investment in the United*
22 *States, as delegated by the Secretary of the Treasury*
23 *under this section.*

24 “(5) *DESIGNATION OF LEAD AGENCY.—The Sec-*
25 *retary of the Treasury shall designate, as appropriate,*

1 *a member or members of the Committee to be the lead*
2 *agency or agencies on behalf of the Committee—*

3 *“(A) for each covered transaction, and for*
4 *negotiating any mitigation agreements or other*
5 *conditions necessary to protect national security;*
6 *and*

7 *“(B) for all matters related to the moni-*
8 *toring of the completed transaction, to ensure*
9 *compliance with such agreements or conditions*
10 *and with this section.*

11 *“(6) OTHER MEMBERS.—The chairperson shall*
12 *consult with the heads of such other Federal depart-*
13 *ments, agencies, and independent establishments in*
14 *any review or investigation under subsection (a), as*
15 *the chairperson determines to be appropriate, on the*
16 *basis of the facts and circumstances of the covered*
17 *transaction under review or investigation (or the des-*
18 *ignee of any such department or agency head).*

19 *“(7) MEETINGS.—The Committee shall meet*
20 *upon the direction of the President or upon the call*
21 *of the chairperson, without regard to section 552b of*
22 *title 5, United States Code (if otherwise applicable).”.*

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

24 *Section 721(f) of the Defense Production Act of 1950*
25 *(50 U.S.C. App. 2170(f)) is amended—*

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

3 (2) *in paragraph (4)—*

4 (A) *in subparagraph (A) by striking “or”*
5 *at the end;*

6 (B) *by redesignating subparagraph (B) as*
7 *subparagraph (C);*

8 (C) *by inserting after subparagraph (A) the*
9 *following:*

10 *“(B) identified by the Secretary of Defense*
11 *as posing a potential regional military threat to*
12 *the interests of the United States; or”;* and

13 (D) *by striking “and” at the end;*

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

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

17 *“(6) the potential national security-related effects*
18 *on United States critical infrastructure, including*
19 *major energy assets;*

20 *“(7) the potential national security-related effects*
21 *on United States critical technologies;*

22 *“(8) whether the covered transaction is a foreign*
23 *government-controlled transaction, as determined*
24 *under subsection (b)(1)(B);*

1 “(9) as appropriate, and particularly with re-
2 spect to transactions requiring an investigation under
3 subsection (b)(1)(B), a review of the current assess-
4 ment of—

5 “(A) the adherence of the subject country to
6 nonproliferation control regimes, including trea-
7 ties and multilateral supply guidelines, which
8 shall draw on, but not be limited to, the annual
9 report on ‘Adherence to and Compliance with
10 Arms Control, Nonproliferation and Disar-
11 mament Agreements and Commitments’ required
12 by section 403 of the Arms Control and Disar-
13 mament Act;

14 “(B) the relationship of such country with
15 the United States, specifically on its record on
16 cooperating in counter-terrorism efforts, which
17 shall draw on, but not be limited to, the report
18 of the President to Congress under section 7120
19 of the Intelligence Reform and Terrorism Preven-
20 tion Act of 2004; and

21 “(C) the potential for transshipment or di-
22 version of technologies with military applica-
23 tions, including an analysis of national export
24 control laws and regulations;

1 “(10) the long-term projection of United States
2 requirements for sources of energy and other critical
3 resources and material; and

4 “(11) such other factors as the President or the
5 Committee may determine to be appropriate, gen-
6 erally or in connection with a specific review or in-
7 vestigation.”.

8 **SEC. 5. MITIGATION, TRACKING, AND POSTCONSUMMATION**
9 **MONITORING AND ENFORCEMENT.**

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

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

15 “(1) **MITIGATION.**—

16 “(A) **IN GENERAL.**—The Committee or a
17 lead agency may, on behalf of the Committee, ne-
18 gotiate, enter into or impose, and enforce any
19 agreement or condition with any party to the
20 covered transaction in order to mitigate any
21 threat to the national security of the United
22 States that arises as a result of the covered
23 transaction.

24 “(B) **RISK-BASED ANALYSIS REQUIRED.**—
25 Any agreement entered into or condition imposed

1 *under subparagraph (A) shall be based on a risk-*
2 *based analysis, conducted by the Committee, of*
3 *the threat to national security of the covered*
4 *transaction.*

5 “(2) *TRACKING AUTHORITY FOR WITHDRAWN NO-*
6 *TICES.—*

7 “(A) *IN GENERAL.—If any written notice of*
8 *a covered transaction that was submitted to the*
9 *Committee under this section is withdrawn be-*
10 *fore any review or investigation by the Com-*
11 *mittee under subsection (b) is completed, the*
12 *Committee shall establish, as appropriate—*

13 “(i) *interim protections to address spe-*
14 *cific concerns with such transaction that*
15 *have been raised in connection with any*
16 *such review or investigation pending any*
17 *resubmission of any written notice under*
18 *this section with respect to such transaction*
19 *and further action by the President under*
20 *this section;*

21 “(ii) *specific time frames for resubmit-*
22 *ting any such written notice; and*

23 “(iii) *a process for tracking any ac-*
24 *tions that may be taken by any party to the*
25 *transaction, in connection with the trans-*

1 *action, before the notice referred to in clause*
2 *(ii) is resubmitted.*

3 “(B) *DESIGNATION OF AGENCY.—The lead*
4 *agency, other than any entity of the intelligence*
5 *community (as defined in the National Security*
6 *Act of 1947), shall, on behalf of the Committee,*
7 *ensure that the requirements of subparagraph*
8 *(A) with respect to any covered transaction that*
9 *is subject to such subparagraph are met.*

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

12 “(A) *DESIGNATION OF LEAD AGENCY.—The*
13 *lead agency shall negotiate, modify, monitor,*
14 *and enforce, on behalf of the Committee, any*
15 *agreement entered into or condition imposed*
16 *under paragraph (1) with respect to a covered*
17 *transaction, based on the expertise with and*
18 *knowledge of the issues related to such trans-*
19 *action on the part of the designated department*
20 *or agency. Nothing in this paragraph shall pro-*
21 *hibit other departments or agencies in assisting*
22 *the lead agency in carrying out the purposes of*
23 *this paragraph.*

24 “(B) *REPORTING BY DESIGNATED AGEN-*
25 *CY.—*

1 “(i) *MODIFICATION REPORTS.*—*The*
2 *lead agency in connection with any agree-*
3 *ment entered into or condition imposed*
4 *with respect to a covered transaction*
5 *shall—*

6 “(I) *provide periodic reports to*
7 *the Committee on any material modi-*
8 *fication to any such agreement or con-*
9 *dition imposed with respect to the*
10 *transaction; and*

11 “(II) *ensure that any material*
12 *modification to any such agreement or*
13 *condition is reported to the Director of*
14 *National Intelligence, the Attorney*
15 *General of the United States, and any*
16 *other Federal department or agency*
17 *that may have a material interest in*
18 *such modification.*

19 “(ii) *COMPLIANCE.*—*The Committee*
20 *shall develop and agree upon methods for*
21 *evaluating compliance with any agreement*
22 *entered into or condition imposed with re-*
23 *spect to a covered transaction that will*
24 *allow the Committee to adequately assure*
25 *compliance, without—*

1 “(I) unnecessarily diverting Com-
2 mittee resources from assessing any
3 new covered transaction for which a
4 written notice has been filed pursuant
5 to subsection (b)(1)(C), and if nec-
6 essary, reaching a mitigation agree-
7 ment with or imposing a condition on
8 a party to such covered transaction or
9 any covered transaction for which a re-
10 view has been reopened for any reason;
11 or

12 “(II) placing unnecessary burdens
13 on a party to a covered transaction.”.

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

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

18 “(d) **ACTION BY THE PRESIDENT.**—

19 “(1) **IN GENERAL.**—Subject to paragraph (4), the
20 President may take such action for such time as the
21 President considers appropriate to suspend or pro-
22 hibit any covered transaction that threatens to im-
23 pair the national security of the United States.

24 “(2) **ANNOUNCEMENT BY THE PRESIDENT.**—The
25 President shall announce the decision on whether or

1 *not to take action pursuant to paragraph (1) not*
2 *later than 15 days after the date on which an inves-*
3 *tigation described in subsection (b) is completed.*

4 “(3) *ENFORCEMENT.*—*The President may direct*
5 *the Attorney General of the United States to seek ap-*
6 *propriate relief, including divestment relief, in the*
7 *district courts of the United States, in order to imple-*
8 *ment and enforce this subsection.*

9 “(4) *FINDINGS OF THE PRESIDENT.*—*The Presi-*
10 *dent may exercise the authority conferred by para-*
11 *graph (1), only if the President finds that—*

12 “(A) *there is credible evidence that leads the*
13 *President to believe that the foreign interest exer-*
14 *cising control might take action that threatens to*
15 *impair the national security; and*

16 “(B) *provisions of law, other than this sec-*
17 *tion and the International Emergency Economic*
18 *Powers Act, do not, in the judgment of the Presi-*
19 *dent, provide adequate and appropriate author-*
20 *ity for the President to protect the national secu-*
21 *rity in the matter before the President.*

22 “(5) *FACTORS TO BE CONSIDERED.*—*For pur-*
23 *poses of determining whether to take action under*
24 *paragraph (1), the President shall consider, among*

1 *other factors each of the factors described in subsection*
2 *(f), as appropriate.*

3 “(e) *ACTIONS AND FINDINGS NONREVIEWABLE.—The*
4 *actions of the President under paragraph (1) of subsection*
5 *(d) and the findings of the President under paragraph (4)*
6 *of subsection (d) shall not be subject to judicial review.”.*

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

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

11 “(g) *ADDITIONAL INFORMATION TO CONGRESS; CON-*
12 *FIDENTIALITY.—*

13 “(1) *BRIEFING REQUIREMENT ON REQUEST.—*
14 *The Committee shall, upon request from any Member*
15 *of Congress specified in subsection (b)(3)(C)(iii),*
16 *promptly provide briefings on a covered transaction*
17 *for which all action has concluded under this section,*
18 *or on compliance with a mitigation agreement or con-*
19 *dition imposed with respect to such transaction, on a*
20 *classified basis, if deemed necessary by the sensitivity*
21 *of the information. Briefings under this paragraph*
22 *may be provided to the congressional staff of such a*
23 *Member of Congress having appropriate security*
24 *clearance.*

1 “(2) *APPLICATION OF CONFIDENTIALITY PROVI-*
2 *SIONS.—*—

3 “(A) *IN GENERAL.—The disclosure of infor-*
4 *mation under this subsection shall be consistent*
5 *with the requirements of subsection (c). Members*
6 *of Congress and staff of either House of Congress*
7 *or any committee of Congress, shall be subject to*
8 *the same limitations on disclosure of information*
9 *as are applicable under subsection (c).*

10 “(B) *PROPRIETARY INFORMATION.—Propri-*
11 *etary information which can be associated with*
12 *a particular party to a covered transaction shall*
13 *be furnished in accordance with subparagraph*
14 *(A) only to a committee of Congress, and only*
15 *when the committee provides assurances of con-*
16 *fidentiality, unless such party otherwise consents*
17 *in writing to such disclosure.”.*

18 (b) *ANNUAL REPORT.—Section 721 of the Defense Pro-*
19 *duction Act of 1950 (50 U.S.C. App. 2170) is amended by*
20 *adding at the end the following:*

21 “(m) *ANNUAL REPORT TO CONGRESS.—*

22 “(1) *IN GENERAL.—The chairperson shall trans-*
23 *mit a report to the chairman and ranking member of*
24 *the committee of jurisdiction in the Senate and the*
25 *House of Representatives, before July 31 of each year*

1 *on all of the reviews and investigations of covered*
2 *transactions completed under subsection (b) during*
3 *the 12-month period covered by the report.*

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

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

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

21 “(C) *Cumulative and, as appropriate, trend*
22 *information on the business sectors involved in*
23 *the filings which have been made, and the coun-*
24 *tries from which the investments have originated.*

1 “(D) *Information on whether companies*
2 *that withdrew notices to the Committee in ac-*
3 *cordance with subsection (b)(1)(C)(ii) have later*
4 *refiled such notices, or, alternatively, abandoned*
5 *the transaction.*

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

13 “(F) *A detailed discussion of all perceived*
14 *adverse effects of covered transactions on the na-*
15 *tional security or critical infrastructure of the*
16 *United States that the Committee will take into*
17 *account in its deliberations during the period be-*
18 *fore delivery of the next report, to the extent pos-*
19 *sible.*

20 “(3) *CONTENTS OF REPORT RELATING TO CRIT-*
21 *ICAL TECHNOLOGIES.—*

22 “(A) *IN GENERAL.—In order to assist Con-*
23 *gress in its oversight responsibilities with respect*
24 *to this section, the President and such agencies*
25 *as the President shall designate shall include in*

1 *the annual report submitted under paragraph*
2 *(1)—*

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

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

16 “(B) *RELEASE OF UNCLASSIFIED STUDY.—*
17 *All appropriate portions of the annual report*
18 *under paragraph (1) may be classified. An un-*
19 *classified version of the report, as appropriate,*
20 *consistent with safeguarding national security*
21 *and privacy, shall be made available to the pub-*
22 *lic.”.*

23 (c) *STUDY AND REPORT.—*

24 (1) *STUDY REQUIRED.—Before the end of the*
25 *120-day period beginning on the date of enactment of*

1 *this Act and annually thereafter, the Secretary of the*
2 *Treasury, in consultation with the Secretary of State*
3 *and the Secretary of Commerce, shall conduct a study*
4 *on foreign direct investments in the United States, es-*
5 *pecially investments in critical infrastructure and in-*
6 *dustries affecting national security, by—*

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

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

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

1 *graph (1), together with an analysis of the effects of*
2 *such investment on the national security of the*
3 *United States and on any efforts to address those ef-*
4 *fects.*

5 *(d) INVESTIGATION BY INSPECTOR GENERAL.—*

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

14 *(2) REPORT TO THE CONGRESS.—Before the end*
15 *of the 270-day period beginning on the date of enact-*
16 *ment of this Act, the Inspector General of the Depart-*
17 *ment of the Treasury shall submit a report on the in-*
18 *vestigation under paragraph (1) containing the find-*
19 *ings and conclusions of the Inspector General, to the*
20 *chairman and ranking member of each committee of*
21 *the Senate and the House of Representatives having*
22 *jurisdiction over any aspect of the report, including,*
23 *at a minimum, the Committee on Foreign Relations,*
24 *the Committee on Banking, Housing, and Urban Af-*
25 *airs, and the Committee on Commerce, Science, and*

1 *Transportation of the Senate, and the Committee on*
2 *Foreign Affairs, the Committee on Financial Services,*
3 *and the Committee on Energy and Commerce of the*
4 *House of Representatives.*

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

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

9 “*(n) CERTIFICATION OF NOTICES AND ASSURANCES.—*
10 *Each notice, and any followup information, submitted*
11 *under this section and regulations prescribed under this sec-*
12 *tion to the President or the Committee by a party to a cov-*
13 *ered transaction, and any information submitted by any*
14 *such party in connection with any action for which a report*
15 *is required pursuant to paragraph (3)(B) of subsection (l),*
16 *with respect to the implementation of any mitigation agree-*
17 *ment or condition described in paragraph (1)(A) of sub-*
18 *section (l), or any material change in circumstances, shall*
19 *be accompanied by a written statement by the chief execu-*
20 *tive officer or the designee of the person required to submit*
21 *such notice or information certifying that, to the best of the*
22 *knowledge and belief of that person—*

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

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

3 **SEC. 9. REGULATIONS.**

4 *Section 721(h) of the Defense Production Act of 1950*
5 *(50 U.S.C. App. 2170(h)) is amended to read as follows:*

6 “(h) *REGULATIONS.*—

7 “(1) *IN GENERAL.*—*The President shall direct,*
8 *subject to notice and comment, the issuance of regula-*
9 *tions to carry out this section.*

10 “(2) *EFFECTIVE DATE.*—*Regulations issued*
11 *under this section shall become effective not later than*
12 *180 days after the effective date of the Foreign Invest-*
13 *ment and National Security Act of 2007.*

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

16 “(A) *provide for the imposition of civil pen-*
17 *alties for any violation of this section, including*
18 *any mitigation agreement entered into or condi-*
19 *tions imposed pursuant to subsection (l);*

20 “(B) *to the extent possible—*

21 “(i) *minimize paperwork burdens; and*

22 “(ii) *coordinate reporting requirements*
23 *under this section with reporting require-*
24 *ments under any other provision of Federal*
25 *law; and*

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

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

5 Section 721(i) of the Defense Production Act of 1950
6 (50 U.S.C. App. 2170(i)) is amended to read as follows:

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

15 **SEC. 11. CLERICAL AMENDMENTS.**

16 (a) *TITLE 31.*—Section 301(e) of title 31, United
17 States Code, is amended by striking “8 Assistant” and in-
18 serting “9 Assistant”.

19 (b) *TITLE 5.*—Section 5315 of title 5, United States
20 Code, is amended in the item relating to “Assistant Secre-
21 taries of the Treasury”, by striking “(8)” and inserting
22 “(9)”.

1 **SEC. 12. EFFECTIVE DATE.**

2 *The amendments made by this Act shall apply after*
3 *the end of the 90-day period beginning on the date of enact-*
4 *ment of this Act.*

Attest:

Secretary.

110TH CONGRESS
1ST SESSION

H. R. 556

AMENDMENT