

Union Calendar No. 329

109TH CONGRESS
2^D SESSION

H. R. 5337

[Report No. 109–523, Parts I and II]

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 2006

Mr. BLUNT (for himself, Ms. PRYCE of Ohio, Mrs. MALONEY, Mr. CROWLEY, Mr. KING of New York, Mr. HOEKSTRA, Mr. BARTON of Texas, Mr. SMITH of Texas, Mr. YOUNG of Alaska, Mr. MANZULLO, Mr. REYNOLDS, Mr. BAKER, Mr. BACHUS, Mr. NEY, Mrs. KELLY, Mr. FOLEY, Mr. FOSSELLA, Mrs. BIGGERT, Mrs. MYRICK, Mr. DOOLITTLE, Ms. HARRIS, Mr. SHAYS, and Mr. MCCOTTER) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Energy and Commerce and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 22, 2006

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 22, 2006

Referral to Committees on International Relations and Energy and Commerce extended for a period ending not later than July 17, 2006

JULY 17, 2006

Additional sponsors: Mr. CAMP of Michigan, Mr. CLAY, Mr. FORD, Mr. MEEKS of New York, Mr. MOORE of Kansas, Ms. ROS-LEHTINEN, Mr. SCOTT of Georgia, Mr. SESSIONS, Mr. STEARNS, Mr. WAMP, Mr. DAVIS of Alabama, Ms. HOOLEY, Ms. BEAN, Mr. COBLE, Mr. FEENEY, Mr.

LEACH, Mr. MATHESON, Ms. CARSON, Mr. ENGLISH of Pennsylvania, Mr. ISRAEL, Ms. MOORE of Wisconsin, Mr. SHUSTER, Mr. CAMPBELL of California, Mr. OWENS, Mr. MCHENRY, Mr. RANGEL, Mr. TIAHRT, Mr. TIBERI, Ms. VELÁZQUEZ, Mr. WATT, Mrs. CUBIN, Mr. HASTINGS of Florida, Mr. HINOJOSA, Mr. AL GREEN of Texas, Mr. GARRETT of New Jersey, Mr. REICHERT, Ms. WASSERMAN SCHULTZ, Mr. BISHOP of New York, Mr. CLEAVER, Mr. GUTIERREZ, Ms. LEE, Mr. MEEK of Florida, Mr. LUCAS, Mr. LYNCH, Mr. MILLER of North Carolina, Mr. GILLMOR, Mr. PRICE of Georgia, Mr. LATOURETTE, Mr. GENE GREEN of Texas, Ms. HARMAN, Mr. PEARCE, Mr. THOMPSON of Mississippi, Mr. BACA, Mrs. MCCARTHY, Mr. CUMMINGS, Mr. GARY G. MILLER of California, Mr. BRADLEY of New Hampshire, Mr. VAN HOLLEN, Mr. TOWNS, Mr. KUHLMAN of New York, Mr. SULLIVAN, Mr. MELANCON, Mr. MURPHY, Mr. NUNES, and Mr. TERRY

JULY 17, 2006

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 17, 2006

Committee on International Relations discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 10, 2006]

A BILL

To ensure national security while promoting foreign investment and the creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes.

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

1 **SEC. 1. SHORT TITLE.**

2 *This Act may be cited as the “National Security For-*
3 *ign Investment Reform and Strengthened Transparency*
4 *Act of 2006”.*

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

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

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

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

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

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

24 *“(4) FOREIGN GOVERNMENT-CONTROLLED*
25 *TRANSACTION.—The term ‘foreign government-con-*
26 *trolled transaction’ means any covered transaction*

1 *that could result in the control of any person engaged*
2 *in interstate commerce in the United States by a for-*
3 *foreign government or an entity controlled by or acting*
4 *on behalf of a foreign government.*

5 “(5) CLARIFICATION.—*The term ‘national secu-*
6 *rity’ shall be construed so as to include those issues*
7 *relating to ‘homeland security’, including its applica-*
8 *tion to critical infrastructure (as defined in the*
9 *Homeland Security Act of 2002).*

10 “(b) NATIONAL SECURITY REVIEWS AND INVESTIGA-
11 TIONS.—

12 “(1) NATIONAL SECURITY REVIEWS.—

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

22 “(B) CONTROL BY FOREIGN GOVERN-
23 *MENT.—If the Committee determines that the*
24 *covered transaction is a foreign government-con-*
25 *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 to any*
5 *covered transaction may initiate a review of*
6 *the transaction under this paragraph by*
7 *submitting a written notice of the trans-*
8 *action to the Chairperson of the Committee.*

9 “(ii) *WITHDRAWAL OF NOTICE.*—*No*
10 *covered transaction for which a notice was*
11 *submitted under clause (i) may be with-*
12 *drawn from review unless—*

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

16 “(II) *the request is approved in*
17 *writing by the Chairperson, in con-*
18 *sultation with the Vice Chairperson, of*
19 *the Committee.*

20 “(D) *UNILATERAL INITIATION OF RE-*
21 *VIEW.*—*The President, the Committee, or any*
22 *member of the Committee may move to initiate*
23 *a review under subparagraph (A) of—*

24 “(i) *any covered transaction;*

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

10 “(iii) any covered transaction that has
11 previously been reviewed or investigated
12 under this section, if any party to the
13 transaction or the entity resulting from con-
14 summation of the transaction intentionally
15 materially breaches a mitigation agreement
16 or condition described in subsection
17 (l)(1)(A), and—

18 “(I) such breach is certified by the
19 lead department or agency monitoring
20 and enforcing such agreement or condi-
21 tion as an intentional material breach;
22 and

23 “(II) such department or agency
24 certifies that there is no other remedy

1 *or enforcement tool available to address*
2 *such breach.*

3 *“(E) TIMING.—Any review under this para-*
4 *graph shall be completed before the end of the 30-*
5 *day period beginning on the date of the receipt*
6 *of written notice under subparagraph (C) by the*
7 *Chairperson of the Committee, or the date of the*
8 *initiation of the review in accordance with a*
9 *motion under subparagraph (D).*

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

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

13 *“(i) a review of a covered transaction*
14 *under paragraph (1) results in a deter-*
15 *mination that—*

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

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

24 *“(ii) the Director of National Intel-*
25 *ligence identifies particularly complex na-*

1 *tional security or intelligence issues that*
2 *could threaten to impair the national secu-*
3 *rity of the United States and Committee*
4 *members were not able to develop and agree*
5 *upon measures to mitigate satisfactorily*
6 *those threats during the initial review pe-*
7 *riod under paragraph (1),*

8 *the President, acting through the Committee,*
9 *shall immediately conduct an investigation of*
10 *the effects of the transaction on the national se-*
11 *curity of the United States and take any nec-*
12 *essary actions in connection with the transaction*
13 *to protect the national security of the United*
14 *States.*

15 *“(B) TIMING.—*

16 *“(i) IN GENERAL.—Any investigation*
17 *under subparagraph (A) shall be completed*
18 *before the end of the 45-day period begin-*
19 *ning on the date of the investigation com-*
20 *menced.*

21 *“(ii) EXTENSIONS OF TIME.—The pe-*
22 *riod established under subparagraph (B) for*
23 *any investigation of a covered transaction*
24 *may be extended with respect to any par-*
25 *ticular investigation by the President or by*

1 *a rollcall vote of at least 2/3 of the members*
2 *of the Committee involved in the investiga-*
3 *tion by the amount of time specified by the*
4 *President or the Committee at the time of*
5 *the extension, not to exceed 45 days, as nec-*
6 *essary to collect and fully evaluate informa-*
7 *tion relating to—*

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

10 *“(II) any effect of the transaction*
11 *that could threaten to impair the na-*
12 *tional security of the United States.*

13 *“(3) APPROVAL OF CHAIRPERSON AND VICE*
14 *CHAIRPERSON REQUIRED.—*

15 *“(A) IN GENERAL.—A review or investiga-*
16 *tion under this subsection of a covered trans-*
17 *action shall not be treated as final or complete*
18 *until the findings and the report resulting from*
19 *such review or investigation are approved and*
20 *signed by both the Secretary of the Treasury and*
21 *the Secretary of Homeland Security (and such*
22 *authority of each such Secretary may not be del-*
23 *egated to any person other than the Deputy Sec-*
24 *retary of the Treasury or the Deputy Secretary*
25 *of Homeland Security, respectively).*

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

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

10 “(ii) *in the case of any roll call vote*
11 *pursuant to clause (i) in which there is at*
12 *least 1 vote by a Committee member against*
13 *approving a foreign government-controlled*
14 *transaction, are signed by the President (in*
15 *addition to the Chairperson and the Vice*
16 *Chairperson of the Committee under sub-*
17 *paragraph (A)).*

18 “(4) *ANALYSIS BY DIRECTOR OF NATIONAL IN-*
19 *TELLIGENCE.—*

20 “(A) *IN GENERAL.—The Director of Na-*
21 *tional Intelligence shall expeditiously carry out a*
22 *thorough analysis of any threat to the national*
23 *security of the United States of any covered*
24 *transaction, including making requests for infor-*
25 *mation to the Director of the Office of Foreign*

1 *Assets Control within the Department of the*
2 *Treasury and the Director of the Financial*
3 *Crimes Enforcement Network. The Director of*
4 *National Intelligence also shall seek and incor-*
5 *porate the views of all appropriate intelligence*
6 *agencies, including in particular the Defense In-*
7 *telligence Agency.*

8 “(B) 30-DAY MINIMUM.—*The Director of*
9 *National Intelligence shall be provided no less*
10 *than 30 days to complete the analysis required*
11 *under subparagraph (A), except in any instance*
12 *described in paragraph (2)(A)(ii).*

13 “(C) INDEPENDENT ROLE OF DIRECTOR.—
14 *The Director of National Intelligence shall not be*
15 *a member of the Committee and shall serve no*
16 *policy role with the Committee other than to pro-*
17 *vide analysis under subparagraph (A) in connec-*
18 *tion with a covered transaction.*

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

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

24 “(i) *submitting additional information*
25 *concerning the transaction, including any*

1 *proposed restructuring of the transaction or*
2 *any modifications to any agreements in*
3 *connection with the transaction, while any*
4 *review or investigation of the transaction is*
5 *on-going; or*

6 “(ii) *requesting a review or investiga-*
7 *tion of the transaction after any previous*
8 *review or investigation of the same or a*
9 *similar transaction has become final if in-*
10 *formation material to the prior review or*
11 *investigation and not previously submitted*
12 *to the Committee becomes known or if any*
13 *material change in circumstances to the*
14 *covered transaction has occurred since the*
15 *review or investigation.*

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

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

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

1 “(B) submitting a request to withdraw a
2 proposed or pending covered transaction from re-
3 view; and

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

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

10 (a) *IN GENERAL.*—Section 721 of the Defense Produc-
11 tion Act of 1950 (50 U.S.C. App. 2170) is amended by strik-
12 ing subsection (k) and inserting the following new sub-
13 section:

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

16 “(1) *ESTABLISHMENT.*—The Committee on For-
17 eign Investment in the United States established pur-
18 suant to Executive Order No. 11858 shall be a multi-
19 agency committee to carry out this section and such
20 other assignments as the President may designate.

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

24 “(A) The Secretary of the Treasury.

25 “(B) The Secretary of Homeland Security.

1 “(C) *The Secretary of Commerce.*

2 “(D) *The Secretary of Defense.*

3 “(E) *The Secretary of State.*

4 “(F) *The Attorney General.*

5 “(G) *The Chairman of the Council of Eco-*
6 *nomics Advisors.*

7 “(H) *The United States Trade Representa-*
8 *tive.*

9 “(I) *The Director of the Office of Manage-*
10 *ment and Budget.*

11 “(J) *The Director of the National Economic*
12 *Council.*

13 “(K) *The Director of the Office of Science*
14 *and Technology Policy.*

15 “(L) *The President’s Assistant for National*
16 *Security Affairs.*

17 “(M) *Any other designee of the President*
18 *from the Executive Office of the President.*

19 “(3) *CHAIRPERSON; VICE CHAIRPERSON.—The*
20 *Secretary of the Treasury shall be the Chairperson of*
21 *the Committee. The Secretary of Homeland Security*
22 *shall be the Vice Chairperson of the Committee.*

23 “(4) *OTHER MEMBERS.—Subject to subsection*
24 *(b)(4)(B), the Chairperson of the Committee shall in-*
25 *volve the heads of such other Federal departments,*

1 *agencies, and independent establishments in any re-*
2 *view or investigation under subsection (b) as the*
3 *Chairperson, after consulting with the Vice Chair-*
4 *person, determines to be appropriate on the basis of*
5 *the facts and circumstances of the transaction under*
6 *investigation (or the designee of any such department*
7 *or agency head).*

8 *“(5) MEETINGS.—The Committee shall meet*
9 *upon the direction of the President or upon the call*
10 *of the Chairperson of the Committee without regard*
11 *to section 552b of title 5, United States Code (if other-*
12 *wise applicable).*

13 *“(6) COLLECTION OF EVIDENCE.—Subject to sub-*
14 *section (c), the Committee may, for the purpose of*
15 *carrying out this section—*

16 *“(A) sit and act at such times and places,*
17 *take such testimony, receive such evidence, ad-*
18 *minister such oaths; and*

19 *“(B) require the attendance and testimony*
20 *of such witnesses and the production of such*
21 *books, records, correspondence, memoranda, pa-*
22 *pers, and documents as the Chairperson of the*
23 *Committee may determine advisable.*

24 *“(7) AUTHORIZATION OF APPROPRIATIONS.—*
25 *There are authorized to be appropriated to the Sec-*

1 *retary of the Treasury for each of fiscal years 2007,*
2 *2008, 2009, and 2010, expressly and solely for the op-*
3 *erations of the Committee that are conducted by the*
4 *Secretary, the sum of \$10,000,000.”.*

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

8 *(1) by striking “material filed with” and insert-*
9 *ing “material, including proprietary business infor-*
10 *mation, filed with, or testimony presented to,”; and*

11 *(2) by striking “or documentary material” the*
12 *2nd place such term appears and inserting “, docu-*
13 *mentary material, or testimony”.*

14 **SEC. 4. ADDITIONAL FACTORS REQUIRED TO BE CONSID-**
15 **ERED.**

16 *Section 721(f) of the Defense Production Act of 1950*
17 *(50 U.S.C. App. 2170(f)) is amended—*

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

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

21 *(B) by striking “among other factors”;*

22 *(2) by striking “and” at the end of paragraph*
23 *(4);*

24 *(3) by striking the period at the end of para-*
25 *graph (5) and inserting a semicolon; and*

1 (4) *by adding at the end the following new para-*
2 *graphs:*

3 “(6) *whether the covered transaction has a secu-*
4 *rity-related impact on critical infrastructure in the*
5 *United States;*

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

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

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

13 *Section 721(d) of the Defense Production Act of 1950*
14 *(50 U.S.C. App. 2170(d)) is amended by adding at the end*
15 *the following new sentence: “The United States shall not*
16 *be held liable for any losses or other expenses incurred by*
17 *any party to a covered transaction as a result of actions*
18 *taken under this section after a covered transaction has been*
19 *consummated if the party did not submit a written notice*
20 *of the transaction to the Chairperson of the Committee*
21 *under subsection (b)(1)(C) or did not wait until the comple-*
22 *tion of any review or investigation under subsection (b),*
23 *or the end of the 15-day period referred to in this subsection,*
24 *before consummating the transaction.”.*

1 **SEC. 6. MITIGATION, TRACKING, AND POST-CONSUMMA-**
2 **TION MONITORING AND ENFORCEMENT.**

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

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

9 *“(1) MITIGATION.—*

10 *“(A) IN GENERAL.—The Committee may*
11 *negotiate, enter into or impose, and enforce any*
12 *agreement or condition with any party to a cov-*
13 *ered transaction in order to mitigate any threat*
14 *to the national security of the United States.*

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

20 *“(2) TRACKING AUTHORITY FOR WITHDRAWN NO-*
21 *TICES.—*

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

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

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

11 *“(ii) specific timeframes for resubmit-*
12 *ting any such written notice; and*

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

18 *“(B) DESIGNATION OF AGENCY.—The Com-*
19 *mittee may designate an appropriate Federal de-*
20 *partment or agency, other than any entity of the*
21 *intelligence community (as defined in the Na-*
22 *tional Security Act of 1947), as the lead agency*
23 *to carry out the requirements of subparagraph*
24 *(A) with respect to any covered transaction that*
25 *is subject to such subparagraph.*

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

3 “(A) *DESIGNATION OF AGENCY.*—*The Com-*
4 *mittee shall designate a Federal department or*
5 *agency as the lead agency to negotiate, modify,*
6 *monitor, and enforce any agreement entered into*
7 *or condition imposed under paragraph (1) with*
8 *respect to a covered transaction based on the ex-*
9 *pertise with and knowledge of the issues related*
10 *to such transaction on the part of the designated*
11 *department or agency.*

12 “(B) *REPORTING BY DESIGNATED AGEN-*
13 *CY.*—

14 “(i) *IMPLEMENTATION REPORTS.*—*The*
15 *Federal department or agency designated by*
16 *the Committee as a lead agency under sub-*
17 *paragraph (A) in connection with any*
18 *agreement entered into or condition im-*
19 *posed under paragraph (1) with respect to*
20 *a covered transaction shall—*

21 “(I) *provide periodic reports to*
22 *the Chairperson and Vice Chairperson*
23 *of the Committee on the implementa-*
24 *tion of such agreement or condition;*
25 *and*

1 “(II) require, as appropriate, any
2 party to the covered transaction to re-
3 port to the head of such department or
4 agency (or the designee of such depart-
5 ment or agency head) on the imple-
6 mentation or any material change in
7 circumstances.

8 “(ii) *MODIFICATION REPORTS.*—*The*
9 *Federal department or agency designated by*
10 *the Committee as a lead agency under sub-*
11 *paragraph (A) in connection with any*
12 *agreement entered into or condition im-*
13 *posed with respect to a covered transaction*
14 *shall—*

15 “(I) provide periodic reports to
16 the Chairperson and Vice Chairperson
17 of the Committee on any modification
18 to any such agreement or condition
19 imposed with respect to the trans-
20 action; and

21 “(II) ensure that any significant
22 modification to any such agreement or
23 condition is reported to the Director of
24 National Intelligence and to any other
25 Federal department or agency that

1 *may have a material interest in such*
2 *modification.”.*

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

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

7 *“(g) REPORTS TO THE CONGRESS.—*

8 *“(1) REPORTS ON COMPLETED COMMITTEE IN-*
9 *VESTIGATIONS.—*

10 *“(A) IN GENERAL.—Not later than 5 days*
11 *after the completion of a Committee investiga-*
12 *tion of a covered transaction under subsection*
13 *(b)(2), or, if the President indicates an intent to*
14 *take any action authorized under subsection (d)*
15 *with respect to the transaction, after the end of*
16 *15-day period referred to in subsection (d), the*
17 *Chairperson or Vice Chairperson of the Com-*
18 *mittee shall submit a written report on the find-*
19 *ings or actions of the Committee with respect to*
20 *such investigation, the determination of whether*
21 *or not to take action under subsection (d), an ex-*
22 *planation of the findings under subsection (e),*
23 *and the factors considered under subsection (f),*
24 *with respect to such transaction, to—*

1 “(i) the Majority Leader and the Mi-
2 nority Leader of the Senate;

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

5 “(iii) the chairman and ranking mem-
6 ber of each committee of the House of Rep-
7 resentatives and the Senate with jurisdic-
8 tion over any aspect of the covered trans-
9 action and its possible effects on national
10 security.

11 “(B) NOTICE AND BRIEFING REQUIRE-
12 MENT.—If a written request for a briefing on a
13 covered transaction is submitted to the Com-
14 mittee by any Senator or Member of Congress
15 who receives a report on the transaction under
16 subparagraph (A), the Chairperson or Vice
17 Chairperson (or such other person as the Chair-
18 person or Vice Chairperson may designate) shall
19 provide 1 classified briefing to each House of the
20 Congress from which any such briefing request
21 originates in a secure facility of appropriate size
22 and location that shall be open only to the Ma-
23 jority Leader and the Minority Leader of the
24 Senate, the Speaker and the Minority Leader of
25 the House of Representatives, (as the case may

1 *be) the chairman and ranking member of each*
2 *committee of the House of Representatives or the*
3 *Senate (as the case may be) with jurisdiction*
4 *over any aspect of the covered transaction and*
5 *its possible effects on national security, and ap-*
6 *propriate staff members who have security clear-*
7 *ance.*

8 “(2) *APPLICATION OF OTHER PROVISION.—*

9 “(A) *IN GENERAL.—The disclosure of infor-*
10 *mation under this subsection shall be consistent*
11 *with the requirements of subsection (c). Members*
12 *of Congress and staff of either House or any*
13 *committee of the Congress shall be subject to the*
14 *same limitations on disclosure of information as*
15 *are applicable under such subsection.*

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

24 (b) *SEMI-ANNUAL REPORT.—Section 721 of the De-*
25 *fense Production Act of 1950 (50 U.S.C. App. 2170) is*

1 *amended by inserting after subsection (l) (as added by sec-*
2 *tion 6 of this Act) the following new subsection:*

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

4 *“(1) IN GENERAL.—The Chairperson of the Com-*
5 *mittee shall transmit a report to the Congress before*
6 *January 31 and July 31 of each year on all the re-*
7 *views and investigations of covered transactions con-*
8 *ducted under subsection (b) during the 6-month pe-*
9 *riod covered by the report.*

10 *“(2) CONTENTS OF REPORT RELATING TO COV-*
11 *ERED TRANSACTIONS.—The report under paragraph*
12 *(1) shall contain the following information with re-*
13 *spect to each covered transaction:*

14 *“(A) A list of all notices filed and all re-*
15 *views or investigations conducted during the pe-*
16 *riod with basic information on each party to the*
17 *transaction, the nature of the business activities*
18 *or products of all pertinent persons, along with*
19 *information about the status of the review or in-*
20 *vestigation, information on any withdrawal*
21 *from the process, any rollcall votes by the Com-*
22 *mittee under this section, any extension of time*
23 *for any investigation, and any presidential deci-*
24 *sion or action under this section.*

1 “(B) *Specific, cumulative, and, as appro-*
2 *priate, trend information on the numbers of fil-*
3 *ings, investigations, withdrawals, and presi-*
4 *dential decisions or actions under this section.*

5 “(C) *Cumulative and, as appropriate, trend*
6 *information on the business sectors involved in*
7 *the filings which have been made, and the coun-*
8 *tries from which the investments have originated.*

9 “(D) *Information on whether companies*
10 *that withdrew notices to the Committee in ac-*
11 *cordance with subsection (b)(1)(C)(ii) have later*
12 *re-filed such notices, or, alternatively, abandoned*
13 *the transaction.*

14 “(E) *The types of security arrangements*
15 *and conditions the Committee has used to miti-*
16 *gate national security concerns about a trans-*
17 *action.*

18 “(F) *A detailed discussion of all perceived*
19 *adverse effects of covered transactions on the na-*
20 *tional security or critical infrastructure of the*
21 *United States that the Committee will take into*
22 *account in its deliberations during the period be-*
23 *fore delivery of the next such report, to the extent*
24 *possible.*

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

3 “(A) *IN GENERAL.*—*In order to assist the*
4 *Congress in its oversight responsibilities with re-*
5 *spect to this section, the President and such*
6 *agencies as the President shall designate shall in-*
7 *clude in the semi-annual report submitted under*
8 *paragraph (1) the following:*

9 “(i) *An evaluation of whether there is*
10 *credible evidence of a coordinated strategy*
11 *by 1 or more countries or companies to ac-*
12 *quire United States companies involved in*
13 *research, development, or production of crit-*
14 *ical technologies for which the United States*
15 *is a leading producer.*

16 “(ii) *An evaluation of whether there*
17 *are industrial espionage activities directed*
18 *or directly assisted by foreign governments*
19 *against private United States companies*
20 *aimed at obtaining commercial secrets re-*
21 *lated to critical technologies.*

22 “(B) *CRITICAL TECHNOLOGIES DEFINED.*—
23 *For purposes of this paragraph, the term ‘crit-*
24 *ical technologies’ means technologies identified*
25 *under title VI of the National Science and Tech-*

1 *nology Policy, Organization, and Priorities Act*
2 *of 1976 or other critical technology, critical com-*
3 *ponents, or critical technology items essential to*
4 *national defense or national security identified*
5 *pursuant to this section.*

6 “(C) *RELEASE OF UNCLASSIFIED STUDY.*—

7 *That portion of the semi-annual report under*
8 *paragraph (1) that is required by this para-*
9 *graph may be classified. An unclassified version*
10 *of that portion of the report shall be made avail-*
11 *able to the public.”.*

12 (c) *INVESTIGATION BY INSPECTOR GENERAL.*—

13 (1) *IN GENERAL.*—*The Inspector General of the*
14 *Department of the Treasury shall conduct an inde-*
15 *pendent investigation to determine all of the facts and*
16 *circumstances concerning each failure of the Depart-*
17 *ment of the Treasury to make any report to the Con-*
18 *gress that was required under section 721(k) of the*
19 *Defense Production Act of 1950 (as in effect before the*
20 *date of the enactment of this Act).*

21 (2) *REPORT TO THE CONGRESS.*—*Before the end*
22 *of the 270-day period beginning on the date of the en-*
23 *actment of this Act, the Inspector General of the De-*
24 *partment of the Treasury shall submit a report to the*
25 *Congress on the investigation under paragraph (1)*

1 *containing the findings and conclusions of the Inspec-*
2 *tor General.*

3 *(d) STUDY AND REPORT.—*

4 *(1) STUDY REQUIRED.—Before the end of the*
5 *120-day period beginning on the date of the enact-*
6 *ment of this Act, the Secretary of the Treasury, in*
7 *consultation with the Secretary of State and the Sec-*
8 *retary of Commerce, shall conduct a study on invest-*
9 *ments in the United States, especially investments in*
10 *critical infrastructure and industries affecting na-*
11 *tional security, by—*

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

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

21 *(2) REPORT.—Before the end of the 30-day pe-*
22 *riod beginning upon completion of the study under*
23 *paragraph (1) or in the next semi-annual report*
24 *under section 721(m) of the Defense Production Act*
25 *of 1950 (as added by subsection (b)), the Secretary of*

1 *the Treasury shall submit a report to the Congress,*
2 *for transmittal to all appropriate committees of the*
3 *Senate and the House of Representatives, containing*
4 *the findings and conclusions of the Secretary with re-*
5 *spect to the study, together with an analysis of the ef-*
6 *fects of such investment on the national security of the*
7 *United States and on any efforts to address those ef-*
8 *fects.*

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

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

14 *“(n) CERTIFICATION OF NOTICES AND ASSURANCES.—*
15 *Each notice required to be submitted, by a party to a cov-*
16 *ered transaction, to the President or the President’s designee*
17 *under this section and regulations prescribed under such*
18 *section, and any information submitted by any such party*
19 *in connection with any action for which a report is required*
20 *pursuant to paragraph (3)(B)(ii) of subsection (l) with re-*
21 *spect to the implementation of any mitigation agreement*
22 *or condition described in paragraph (1)(A) of such sub-*
23 *section, or any material change in circumstances, shall be*
24 *accompanied by a written statement by the chief executive*
25 *officer or the designee of the person required to submit such*

1 *notice or information certifying that, to the best of the per-*
2 *son’s knowledge and belief—*

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

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

8 **SEC. 9. REGULATIONS.**

9 *Section 721(h) of the Defense Production Act of 1950*
10 *(50 U.S.C. App. 2170(h)) is amended to read as follows:*

11 *“(h) REGULATIONS.—The President shall direct the*
12 *issuance of regulations to carry out this section. Such regu-*
13 *lations shall, to the extent possible, minimize paperwork*
14 *burdens and shall to the extent possible coordinate reporting*
15 *requirements under this section with reporting require-*
16 *ments under any other provision of Federal law.”.*

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

18 *Section 721(i) of the Defense Production Act of 1950*
19 *(50 U.S.C. App. 2170(i)) is amended to read as follows:*

20 *“(i) EFFECT ON OTHER LAW.—No provision of this*
21 *section shall be construed as altering or affecting any other*
22 *authority, process, regulation, investigation, enforcement*
23 *measure, or review provided by or established under any*
24 *other provision of Federal law, including the International*
25 *Emergency Economic Powers Act, or any other authority*

1 *of the President or the Congress under the Constitution of*
2 *the United States.”.*

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

16 **“(1) COMMITTEE.—The term ‘Com-**
17 **mittee’ means the Committee on Foreign**
18 **Investment in the United States.**

19 **“(2) CONTROL.—The term ‘control’ has**
20 **the meaning given to such term in regu-**
21 **lations which the Committee shall pre-**
22 **scribe.**

23 **“(3) COVERED TRANSACTION.—The term**
24 **‘covered transaction’ means any merger,**
25 **acquisition, or takeover by or with any**

1 **foreign person which could result in for-**
2 **foreign control of any person engaged in**
3 **interstate commerce in the United States.**

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

13 **“(b) NATIONAL SECURITY REVIEWS AND IN-**
14 **VESTIGATIONS.—**

15 **“(1) NATIONAL SECURITY REVIEWS.—**

16 **“(A) IN GENERAL.—Upon receiving**
17 **written notification under subpara-**
18 **graph (C) of any covered transaction,**
19 **or on a motion made under subpara-**
20 **graph (D) with respect to any covered**
21 **transaction, the President, acting**
22 **through the Committee, shall review**
23 **the covered transaction to determine**
24 **whether the transaction threatens to**
25 **impair the national security of the**

1 **United States and whether such**
2 **threat can be mitigated.**

3 **“(B) CONTROL BY FOREIGN GOVERN-**
4 **MENT.—If the Committee determines**
5 **that the covered transaction is a for-**
6 **ign government-controlled trans-**
7 **action, the Committee shall conduct**
8 **an investigation of the transaction**
9 **under paragraph (2).**

10 **“(C) WRITTEN NOTICE.—**

11 **“(i) IN GENERAL.—Any party to**
12 **any covered transaction may ini-**
13 **tiate a review of the transaction**
14 **under this paragraph by submit-**
15 **ting a written notice of the trans-**
16 **action to the Chairperson of the**
17 **Committee.**

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

23 **“(I) a written request for**
24 **such withdrawal is submitted**

1 by any party to the trans-
2 action; and

3 “(II) the request is ap-
4 proved in writing by the
5 Chairperson of the Com-
6 mittee.

7 “(D) UNILATERAL INITIATION OF RE-
8 VIEW.—The President, the Committee,
9 or any member of the Committee may
10 move to initiate a review under sub-
11 paragraph (A) of—

12 “(i) any covered transaction;

13 “(ii) any covered transaction
14 that has previously been re-
15 viewed or investigated under this
16 section, if any party to the trans-
17 action submitted false or mis-
18 leading material information to
19 the Committee in connection with
20 the review or investigation or
21 omitted material information, in-
22 cluding material documents, from
23 information submitted to the
24 Committee; or

1 “(iii) any covered transaction
2 that has previously been re-
3 viewed or investigated under this
4 section, if any party to the trans-
5 action or the entity resulting
6 from consummation of the trans-
7 action intentionally materially
8 breaches a mitigation agreement
9 or condition described in sub-
10 section (l)(1)(A), and—

11 “(I) such breach is cer-
12 tified by the lead department
13 or agency monitoring and en-
14 forcing such agreement or
15 condition as an intentional
16 material breach; and

17 “(II) such department or
18 agency certifies that there is
19 no other remedy or enforce-
20 ment tool available to address
21 such breach.

22 “(E) TIMING.—Any review under
23 this paragraph shall be completed be-
24 fore the end of the 30-day period be-
25 ginning on the date of the receipt of

1 written notice under subparagraph
2 (C) by the Chairperson of the Com-
3 mittee, or the date of the initiation of
4 the review in accordance with a mo-
5 tion under subparagraph (D).

6 “(2) NATIONAL SECURITY INVESTIGA-
7 TIONS.—

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

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

13 “(I) the transaction threat-
14 ens to impair the national se-
15 curity of the United States
16 and that threat has not been
17 mitigated during or prior to
18 the review of a covered trans-
19 action under paragraph (1); or

20 “(II) the transaction is a
21 foreign government-con-
22 trolled transaction; or

23 “(ii) the Director of National
24 Intelligence identifies particu-
25 larly complex national security or

1 intelligence issues that could
2 threaten to impair the national
3 security of the United States and
4 were not resolved during the ini-
5 tial review period under para-
6 graph (1),

7 the President, acting through the
8 Committee, shall immediately con-
9 duct an investigation of the effects of
10 the transaction on the national secu-
11 rity of the United States and take any
12 necessary actions in connection with
13 the transaction to protect the na-
14 tional security of the United States.

15 “(B) TIMING.—

16 “(i) IN GENERAL.—Any inves-
17 tigation under subparagraph (A)
18 shall be completed before the end
19 of the 45-day period beginning on
20 the date of the investigation com-
21 menced.

22 “(ii) EXTENSIONS OF TIME.—The
23 period established under sub-
24 paragraph (B) for any investiga-
25 tion of a covered transaction may

1 be extended with respect to any
2 particular investigation by the
3 President or by a rollcall vote of
4 at least 2/3 of the members of the
5 Committee involved in the inves-
6 tigation by the amount of time
7 specified by the President or the
8 Committee at the time of the ex-
9 tension, not to exceed 45 days, as
10 necessary to collect and fully
11 evaluate information relating to—

12 “(I) the covered trans-
13 action or parties to the trans-
14 action; and

15 “(II) any effect of the
16 transaction that could threat-
17 en to impair the national se-
18 curity of the United States.

19 “(3) APPROVAL OF CHAIRPERSON RE-
20 QUIRED.—

21 “(A) IN GENERAL.—A review or in-
22 vestigation under this subsection of a
23 covered transaction shall not be
24 treated as final or complete until the
25 findings and the report resulting

1 from such review or investigation are
2 approved and signed by the Chair-
3 person of the Committee after ap-
4 proval by a majority vote of the Com-
5 mittee.

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

14 **“(i) are approved by a major-**
15 **ity of the members of the Com-**
16 **mittee in a roll call vote; and**

17 **“(ii) in the case of any roll call**
18 **vote pursuant to clause (i) in**
19 **which there is at least 1 vote by a**
20 **Committee member against ap-**
21 **proving a foreign government-**
22 **controlled transaction, are signed**
23 **by the President (in addition to**
24 **the Chairperson and the Vice**

1 **Chairperson of the Committee**
2 **under subparagraph (A)).**

3 **“(4) ANALYSIS BY DIRECTOR OF NA-**
4 **TIONAL INTELLIGENCE.—**

5 **“(A) IN GENERAL.—The Director of**
6 **National Intelligence shall expedi-**
7 **tiously carry out a thorough analysis**
8 **of any threat to the national security**
9 **of the United States of any covered**
10 **transaction, including an affirmative**
11 **inquiry for information to the Direc-**
12 **tor of the Office of Foreign Assets**
13 **Control within the Department of the**
14 **Treasury and the Director of the Fi-**
15 **ancial Crimes Enforcement Net-**
16 **work.**

17 **“(B) 30-DAY MINIMUM.—The anal-**
18 **ysis required under subparagraph (A)**
19 **shall take no less than 30 days and be**
20 **completed no less than 7 days before**
21 **the end of the initial review period**
22 **under paragraph (1), except in any in-**
23 **stance described in paragraph**
24 **(2)(A)(ii).**

1 **“(C) INDEPENDENT ROLE OF DIREC-**
2 **TOR.—The Director of National Intel-**
3 **ligence shall not be a member of the**
4 **Committee and shall serve no policy**
5 **role with the Committee other than**
6 **to provide analysis under subpara-**
7 **graph (A) in connection with a cov-**
8 **ered transaction.**

9 **“(5) RESUBMITTALS OF NOTICE AND RE-**
10 **QUESTS FOR ADDITIONAL REVIEW OR INVES-**
11 **TIGATION.—**

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

16 **“(i) submitting additional in-**
17 **formation concerning the trans-**
18 **action, including any proposed re-**
19 **structuring of the transaction or**
20 **any modifications to any agree-**
21 **ments in connection with the**
22 **transaction, while any review or**
23 **investigation of the transaction is**
24 **on-going; or**

1 “(ii) requesting a review or in-
2 vestigation of the transaction
3 after any previous review or in-
4 vestigation of the same or a simi-
5 lar transaction has become final
6 if information material to the
7 prior review or investigation and
8 not previously submitted to the
9 Committee becomes known or if
10 any material change in cir-
11 cumstances to the covered trans-
12 action has occurred since the re-
13 view or investigation.

14 “(B) APPROVAL OF REQUEST.—In
15 the case of a request referred to in
16 subparagraph (A)(ii), the Committee
17 shall determine by consensus wheth-
18 er to grant a request.

19 “(6) REGULATIONS.—Regulations pre-
20 scribed under this section shall include
21 standard procedures for—

22 “(A) submitting any notice of a
23 proposed or pending covered trans-
24 action to the Committee;

1 **“(B) submitting a request to with-**
2 **draw a proposed or pending covered**
3 **transaction from review; and**

4 **“(C) resubmitting a notice of pro-**
5 **posed or pending covered transaction**
6 **that was previously withdrawn from**
7 **review.”.**

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

11 **(a) IN GENERAL.—Section 721 of the De-**
12 **fense Production Act of 1950 (50 U.S.C. App.**
13 **2170) is amended by striking subsection (k)**
14 **and inserting the following new subsection:**

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

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

1 **“(2) MEMBERSHIP.—The Committee**
2 **shall be comprised of the following mem-**
3 **bers or the designee of any such member:**

4 **“(A) The Secretary of the Treas-**
5 **ury.**

6 **“(B) The Secretary of Homeland**
7 **Security.**

8 **“(C) The Secretary of Commerce.**

9 **“(D) The Secretary of Defense.**

10 **“(E) The Secretary of State.**

11 **“(F) The Attorney General.**

12 **“(G) The Secretary of Energy.**

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

15 **“(I) The United States Trade Rep-**
16 **resentative.**

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

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

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

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

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

4 **“(4) OTHER MEMBERS.—Subject to sub-**
5 **section (b)(4)(B), the Chairperson of the**
6 **Committee shall involve the heads of**
7 **such other Federal departments, agen-**
8 **cies, and independent establishments in**
9 **any review or investigation under sub-**
10 **section (b) as the Chairperson determines**
11 **to be appropriate on the basis of the facts**
12 **and circumstances of the transaction**
13 **under investigation (or the designee of**
14 **any such department or agency head).**

15 **“(5) MEETINGS.—The Committee shall**
16 **meet upon the direction of the President**
17 **or upon the call of the Chairperson of the**
18 **Committee without regard to section**
19 **552b of title 5, United States Code (if oth-**
20 **erwise applicable).**

21 **“(6) COLLECTION OF EVIDENCE.—Sub-**
22 **ject to subsection (c), the Committee may,**
23 **for the purpose of carrying out this sec-**
24 **tion—**

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

5 “(B) require the attendance and
6 testimony of such witnesses and the
7 production of such books, records,
8 correspondence, memoranda, papers,
9 and documents as the Chairperson of
10 the Committee may determine advis-
11 able.

12 “(7) AUTHORIZATION OF APPROPRIA-
13 TIONS.—There are authorized to be appro-
14 priated to the Secretary of the Treasury
15 for each of fiscal years 2007, 2008, 2009,
16 and 2010, expressly and solely for the op-
17 erations of the Committee that are con-
18 ducted by the Secretary, the sum of
19 \$10,000,000.”.

20 (b) TECHNICAL AND CONFORMING AMEND-
21 MENT.—The first sentence of section 721(c) of
22 the Defense Production Act of 1950 (50 U.S.C.
23 App. 2170(c)) is amended—

24 (1) by striking “material filed with”
25 and inserting “material, including propri-

1 etary business information, filed with, or
2 testimony presented to,”; and

3 (2) by striking “or documentary mate-
4 rial” the 2nd place such term appears
5 and inserting “, documentary material, or
6 testimony”.

7 SEC. 4. ADDITIONAL FACTORS REQUIRED TO BE CONSID-
8 ERED.

9 Section 721(f) of the Defense Production
10 Act of 1950 (50 U.S.C. App. 2170(f)) is amend-
11 ed—

12 (1) in the matter preceding paragraph
13 (1)—

14 (A) by striking “may” and insert-
15 ing “shall”; and

16 (B) by striking “among other fac-
17 tors”;

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

20 (3) by striking the period at the end
21 of paragraph (5) and inserting a semi-
22 colon; and

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

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

4 **“(7) whether the covered transaction**
5 **is a foreign government-controlled trans-**
6 **action; and**

7 **“(8) such other factors as the Presi-**
8 **dent or the President’s designee may de-**
9 **termine to be appropriate, generally or in**
10 **connection with a specific review or in-**
11 **vestigation.”.**

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

13 **Section 721(d) of the Defense Production**
14 **Act of 1950 (50 U.S.C. App. 2170(d)) is amended**
15 **by adding at the end the following new sen-**
16 **tence: “The United States shall not be held lia-**
17 **ble for any losses or other expenses incurred**
18 **by any party to a covered transaction as a re-**
19 **sult of actions taken under this section after**
20 **a covered transaction has been consummated**
21 **if the party did not submit a written notice of**
22 **the transaction to the Chairperson of the**
23 **Committee under subsection (b)(1)(C) or did**
24 **not wait until the completion of any review or**
25 **investigation under subsection (b), or the end**

1 of the 15-day period referred to in this sub-
2 section, before consummating the trans-
3 action.”.

4 SEC. 6. MITIGATION, TRACKING, AND POST-CONSUMMA-
5 TION MONITORING AND ENFORCEMENT.

6 Section 721 of the Defense Production Act
7 of 1950 (50 U.S.C. App. 2170) is amended by in-
8 serting after subsection (k) (as amended by
9 section 3 of this Act) the following new sub-
10 section:

11 “(1) MITIGATION, TRACKING, AND
12 POSTCONSUMMATION MONITORING AND EN-
13 FORCEMENT.—

14 “(1) MITIGATION.—

15 “(A) IN GENERAL.—The Committee
16 may negotiate, enter into or impose,
17 and enforce any agreement or condi-
18 tion with any party to a covered
19 transaction in order to mitigate any
20 threat to the national security of the
21 United States.

22 “(B) RISK-BASED ANALYSIS RE-
23 QUIRED.—Any agreement entered into
24 or condition imposed under subpara-
25 graph (A) shall be based on a risk-

1 **based analysis of the threat to na-**
2 **tional security of the covered trans-**
3 **action.**

4 **“(2) TRACKING AUTHORITY FOR WITH-**
5 **DRAWN NOTICES.—**

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

14 **“(i) interim protections to ad-**
15 **dress specific concerns with such**
16 **transaction that have been raised**
17 **in connection with any such re-**
18 **view or investigation pending any**
19 **resubmission of any written no-**
20 **tice under this section with re-**
21 **spect to such transaction and fur-**
22 **ther action by the President**
23 **under this section;**

1 “(ii) specific timeframes for
2 resubmitting any such written no-
3 tice; and

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

10 “(B) DESIGNATION OF AGENCY.—The
11 Committee may designate an appro-
12 priate Federal department or agency,
13 other than any entity of the intel-
14 ligence community (as defined in the
15 National Security Act of 1947), as the
16 lead agency to carry out the require-
17 ments of subparagraph (A) with re-
18 spect to any covered transaction that
19 is subject to such subparagraph.

20 “(3) NEGOTIATION, MODIFICATION, MONI-
21 TORING, AND ENFORCEMENT.—

22 “(A) DESIGNATION OF AGENCY.—The
23 Committee shall designate a Federal
24 department or agency as the lead
25 agency to negotiate, modify, monitor,

1 **and enforce any agreement entered**
2 **into or condition imposed under**
3 **paragraph (1) with respect to a cov-**
4 **ered transaction based on the exper-**
5 **tise with and knowledge of the issues**
6 **related to such transaction on the**
7 **part of the designated department or**
8 **agency.**

9 **“(B) REPORTING BY DESIGNATED**
10 **AGENCY.—**

11 **“(i) IMPLEMENTATION RE-**
12 **PORTS.—The Federal department**
13 **or agency designated by the Com-**
14 **mittee as a lead agency under**
15 **subparagraph (A) in connection**
16 **with any agreement entered into**
17 **or condition imposed under para-**
18 **graph (1) with respect to a cov-**
19 **ered transaction shall—**

20 **“(I) provide periodic re-**
21 **ports to the Chairperson of**
22 **the Committee on the imple-**
23 **mentation of such agreement**
24 **or condition; and**

1 **“(II) require, as appro-**
2 **priate, any party to the cov-**
3 **ered transaction to report to**
4 **the head of such department**
5 **or agency (or the designee of**
6 **such department or agency**
7 **head) on the implementation**
8 **or any material change in cir-**
9 **cumstances.**

10 **“(ii) MODIFICATION REPORTS.—**
11 **The Federal department or agen-**
12 **cy designated by the Committee**
13 **as a lead agency under subpara-**
14 **graph (A) in connection with any**
15 **agreement entered into or condi-**
16 **tion imposed with respect to a**
17 **covered transaction shall—**

18 **“(I) provide periodic re-**
19 **ports to the Chairperson of**
20 **the Committee on any modi-**
21 **fication to any such agree-**
22 **ment or condition imposed**
23 **with respect to the trans-**
24 **action; and**

1 **“(II) ensure that any sig-**
2 **nificant modification to any**
3 **such agreement or condition**
4 **is reported to the Director of**
5 **National Intelligence and to**
6 **any other Federal department**
7 **or agency that may have a**
8 **material interest in such**
9 **modification.”.**

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

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

14 **“(g) REPORTS TO THE CONGRESS.—**

15 **“(1) REPORTS ON COMPLETED COM-**
16 **MITTEE INVESTIGATIONS.—**

17 **“(A) IN GENERAL.—Not later than 5**
18 **days after the completion of a Com-**
19 **mittee investigation of a covered**
20 **transaction under subsection (b)(2),**
21 **or, if the President indicates an in-**
22 **tent to take any action authorized**
23 **under subsection (d) with respect to**
24 **the transaction, after the end of 15-**
25 **day period referred to in subsection**

1 **(d), the Chairperson of the Committee**
2 **shall submit a written report on the**
3 **findings or actions of the Committee**
4 **with respect to such investigation,**
5 **the determination of whether or not**
6 **to take action under subsection (d),**
7 **an explanation of the findings under**
8 **subsection (e), and the factors consid-**
9 **ered under subsection (f), with re-**
10 **spect to such transaction, to—**

11 **“(i) the Majority Leader and**
12 **the Minority Leader of the Sen-**
13 **ate;**

14 **“(ii) the Speaker and the Mi-**
15 **nority Leader of the House of**
16 **Representatives; and**

17 **“(iii) the chairman and rank-**
18 **ing member of each committee of**
19 **the House of Representatives and**
20 **the Senate with jurisdiction over**
21 **any aspect of the covered trans-**
22 **action and its possible effects on**
23 **national security, including the**
24 **Committee on International Rela-**
25 **tions, the Committee on Financial**

1 **Services, and the Committee on**
2 **Energy and Commerce of the**
3 **House of Representatives.**

4 **“(B) NOTICE AND BRIEFING REQUIRE-**
5 **MENT.—If a written request for a**
6 **briefing on a covered transaction is**
7 **submitted to the Committee by any**
8 **Senator or Member of Congress who**
9 **receives a report on the transaction**
10 **under subparagraph (A), the Chair-**
11 **person (or such other person as the**
12 **Chairperson may designate) shall**
13 **provide 1 classified briefing to each**
14 **House of the Congress from which**
15 **any such briefing request originates**
16 **in a secure facility of appropriate size**
17 **and location that shall be open only**
18 **to the Majority Leader and the Minor-**
19 **ity Leader of the Senate, the Speaker**
20 **and the Minority Leader of the House**
21 **of Representatives, (as the case may**
22 **be) the chairman and ranking mem-**
23 **ber of each committee of the House of**
24 **Representatives or the Senate (as the**
25 **case may be) with jurisdiction over**

1 **any aspect of the covered transaction**
2 **and its possible effects on national se-**
3 **curity, including the Committee on**
4 **International Relations, the Com-**
5 **mittee on Financial Services, and the**
6 **Committee on Energy and Commerce**
7 **of the House of Representatives, and**
8 **appropriate staff members who have**
9 **security clearance.**

10 **“(2) APPLICATION OF OTHER PROVI-**
11 **SION.—**

12 **“(A) IN GENERAL.—The disclosure**
13 **of information under this subsection**
14 **shall be consistent with the require-**
15 **ments of subsection (c). Members of**
16 **Congress and staff of either House or**
17 **any committee of the Congress shall**
18 **be subject to the same limitations on**
19 **disclosure of information as are ap-**
20 **licable under such subsection.**

21 **“(B) PROPRIETARY INFORMATION.—**
22 **Proprietary information which can**
23 **be associated with a particular party**
24 **to a covered transaction shall be fur-**
25 **nished in accordance with subpara-**

1 **graph (A) only to a committee of the**
2 **Congress and only when the com-**
3 **mittee provides assurances of con-**
4 **fidentiality, unless such party other-**
5 **wise consents in writing to such dis-**
6 **closure.”.**

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

12 **“(m) SEMI-ANNUAL REPORT TO THE CON-**
13 **GRESS.—**

14 **“(1) IN GENERAL.—The Chairperson of**
15 **the Committee shall transmit a report to**
16 **the chairman and ranking member of**
17 **each committee of the House of Rep-**
18 **resentatives and the Senate with jurisdic-**
19 **tion over any aspect of the report, includ-**
20 **ing the Committee on International Rela-**
21 **tions, the Committee on Financial Serv-**
22 **ices, and the Committee on Energy and**
23 **Commerce of the House of Representa-**
24 **tives, before January 31 and July 31 of**
25 **each year on all the reviews and inves-**

1 **tigations of covered transactions con-**
2 **ducted under subsection (b) during the 6-**
3 **month period covered by the report.**

4 **“(2) CONTENTS OF REPORT RELATING TO**
5 **COVERED TRANSACTIONS.—The report**
6 **under paragraph (1) shall contain the fol-**
7 **lowing information with respect to each**
8 **covered transaction:**

9 **“(A) A list of all notices filed and**
10 **all reviews or investigations con-**
11 **ducted during the period with basic**
12 **information on each party to the**
13 **transaction, the nature of the busi-**
14 **ness activities or products of all per-**
15 **minent persons, along with informa-**
16 **tion about the status of the review or**
17 **investigation, information on any**
18 **withdrawal from the process, any**
19 **rollcall votes by the Committee under**
20 **this section, any extension of time for**
21 **any investigation, and any presi-**
22 **dential decision or action under this**
23 **section.**

24 **“(B) Specific, cumulative, and, as**
25 **appropriate, trend information on the**

1 **numbers of filings, investigations,**
2 **withdrawals, and presidential deci-**
3 **sions or actions under this section.**

4 **“(C) Cumulative and, as appro-**
5 **priate, trend information on the busi-**
6 **ness sectors involved in the filings**
7 **which have been made, and the coun-**
8 **tries from which the investments**
9 **have originated.**

10 **“(D) Information on whether com-**
11 **panies that withdrew notices to the**
12 **Committee in accordance with sub-**
13 **section (b)(1)(C)(ii) have later re-filed**
14 **such notices, or, alternatively, aban-**
15 **doned the transaction.**

16 **“(E) The types of security ar-**
17 **rangements and conditions the Com-**
18 **mittee has used to mitigate national**
19 **security concerns about a trans-**
20 **action.**

21 **“(F) A detailed discussion of all**
22 **perceived adverse effects of covered**
23 **transactions on the national security**
24 **or critical infrastructure of the**
25 **United States that the Committee will**

1 **take into account in its deliberations**
2 **during the period before delivery of**
3 **the next such report, to the extent**
4 **possible.**

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

7 **“(A) IN GENERAL.—In order to as-**
8 **sist the Congress in its oversight re-**
9 **sponsibilities with respect to this sec-**
10 **tion, the President and such agencies**
11 **as the President shall designate shall**
12 **include in the semi-annual report**
13 **submitted under paragraph (1) the**
14 **following:**

15 **“(i) An evaluation of whether**
16 **there is credible evidence of a co-**
17 **ordinated strategy by 1 or more**
18 **countries or companies to acquire**
19 **United States companies involved**
20 **in research, development, or pro-**
21 **duction of critical technologies**
22 **for which the United States is a**
23 **leading producer.**

24 **“(ii) An evaluation of whether**
25 **there are industrial espionage ac-**

1 **tivities directed or directly as-**
2 **sisted by foreign governments**
3 **against private United States**
4 **companies aimed at obtaining**
5 **commercial secrets related to**
6 **critical technologies.**

7 **“(B) CRITICAL TECHNOLOGIES DE-**
8 **FINED.—For purposes of this para-**
9 **graph, the term ‘critical technologies’**
10 **means technologies identified under**
11 **title VI of the National Science and**
12 **Technology Policy, Organization, and**
13 **Priorities Act of 1976 or other critical**
14 **technology, critical components, or**
15 **critical technology items essential to**
16 **national defense or national security**
17 **identified pursuant to this section.**

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

1 **(c) INVESTIGATION BY INSPECTOR GEN-**
2 **ERAL.—**

3 **(1) IN GENERAL.—The Inspector Gen-**
4 **eral of the Department of the Treasury**
5 **shall conduct an independent investiga-**
6 **tion to determine all of the facts and cir-**
7 **cumstances concerning each failure of**
8 **the Department of the Treasury to make**
9 **any report to the Congress that was re-**
10 **quired under section 721(k) of the De-**
11 **fense Production Act of 1950 (as in effect**
12 **before the date of the enactment of this**
13 **Act).**

14 **(2) REPORT TO THE CONGRESS.—Before**
15 **the end of the 270-day period beginning**
16 **on the date of the enactment of this Act,**
17 **the Inspector General of the Department**
18 **of the Treasury shall submit a report to**
19 **the chairman and ranking member of**
20 **each committee of the House of Rep-**
21 **resentatives and the Senate with jurisdic-**
22 **tion over any aspect of the report, includ-**
23 **ing the Committee on International Rela-**
24 **tions, the Committee on Financial Serv-**
25 **ices, and the Committee on Energy and**

1 **Commerce of the House of Representa-**
2 **tives, on the investigation under para-**
3 **graph (1) containing the findings and**
4 **conclusions of the Inspector General.**

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

6 **Section 721 of the Defense Production Act**
7 **of 1950 (50 U.S.C. App. 2170) is amended by in-**
8 **serting after subsection (m) (as added by sec-**
9 **tion 7(b) of this Act) the following new sub-**
10 **section:**

11 **“(n) CERTIFICATION OF NOTICES AND ASSUR-**
12 **ANCES.—Each notice required to be submitted**
13 **to the President or the President’s designee**
14 **under this section and regulations prescribed**
15 **under such section, and each report required**
16 **pursuant to paragraph (3)(B)(ii) of subsection**
17 **(l) with respect to the implementation of any**
18 **mitigation agreement or condition described**
19 **in paragraph (1)(A) of such subsection or any**
20 **material change in circumstances shall be ac-**
21 **companied by a written statement by the**
22 **chief executive officer or the designee of the**
23 **person required to submit such notice or re-**
24 **port certifying that, to the best of the person’s**
25 **knowledge and belief—**

1 “(1) the notice or report submitted
2 fully complies with the requirements of
3 this section or such regulation, agree-
4 ment, or condition; and

5 “(2) the information so contained is
6 accurate and complete in all material re-
7 spects.”.

8 SEC. 9. REGULATIONS.

9 Section 721(h) of the Defense Production
10 Act of 1950 (50 U.S.C. App. 2170(h)) is amend-
11 ed to read as follows:

12 “(h) REGULATIONS.—The President shall di-
13 rect the issuance of regulations to carry out
14 this section. Such regulations shall, to the ex-
15 tent possible, minimize paperwork burdens
16 and shall to the extent possible coordinate re-
17 porting requirements under this section with
18 reporting requirements under any other pro-
19 vision of Federal law.”.

20 SEC. 10. EFFECT ON OTHER LAW.

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

24 “(i) EFFECT ON OTHER LAW.—No provision
25 of this section shall be construed as altering

1 or affecting any other authority, process, reg-
2 ulation, investigation, enforcement measure,
3 or review provided by or established under
4 any other provision of Federal law, including
5 the International Emergency Economic Pow-
6 ers Act, or any other authority of the Presi-
7 dent or the Congress under the Constitution
8 of the United States.”.

Union Calendar No. 329

109TH CONGRESS
2^D SESSION

H. R. 5337

[Report No. 109-523, Parts I and II]

A BILL

To ensure national security while promoting foreign investment and the creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes.

JULY 17, 2006

Reported from the Committee on Energy and Commerce
with an amendment

JULY 17, 2006

Committee on International Relations discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed