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109TH CONGRESS
2^D SESSION**H. R. 5337**

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 26), 2006

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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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Security For-
5 eign Investment Reform and Strengthened Transparency
6 Act of 2006”.

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
5 (50 U.S.C. App. 2170) is amended by striking subsections
6 (a) and (b) and inserting the following new subsections:

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

9 “(1) COMMITTEE.—The term ‘Committee’
10 means the Committee on Foreign Investment in the
11 United States.

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

15 “(3) COVERED TRANSACTION.—The term ‘cov-
16 ered transaction’ means any merger, acquisition, or
17 takeover by or with any foreign person which could
18 result in foreign control of any person engaged in
19 interstate commerce in the United States.

20 “(4) FOREIGN GOVERNMENT-CONTROLLED
21 TRANSACTION.—The term ‘foreign government-con-
22 trolled transaction’ means any covered transaction
23 that could result in the control of any person en-
24 gaged in interstate commerce in the United States
25 by a foreign government or an entity controlled by
26 or acting on behalf of a foreign government.

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

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

7 “(1) NATIONAL SECURITY REVIEWS.—

8 “(A) IN GENERAL.—Upon receiving writ-
9 ten notification under subparagraph (C) of any
10 covered transaction, or on a motion made under
11 subparagraph (D) with respect to any covered
12 transaction, the President, acting through the
13 Committee, shall review the covered transaction
14 to determine the effects on the national security
15 of the United States.

16 “(B) CONTROL BY FOREIGN GOVERN-
17 MENT.—If the Committee determines that the
18 covered transaction is a foreign government-
19 controlled transaction, the Committee shall con-
20 duct an investigation of the transaction under
21 paragraph (2).

22 “(C) WRITTEN NOTICE.—

23 “(i) IN GENERAL.—Any party to any
24 covered transaction may initiate a review
25 of the transaction under this paragraph by

1 submitting a written notice of the trans-
2 action to the Chairperson of the Com-
3 mittee.

4 “(ii) WITHDRAWAL OF NOTICE.—No
5 covered transaction for which a notice was
6 submitted under clause (i) may be with-
7 drawn from review unless—

8 “(I) a written request for such
9 withdrawal is submitted by any party
10 to the transaction; and

11 “(II) the request is approved in
12 writing by the Chairperson, in con-
13 sultation with the Vice Chairpersons,
14 of the Committee.

15 “(iii) CONTINUING DISCUSSIONS.—
16 The approval of a withdrawal request
17 under clause (ii) shall not be construed as
18 precluding any party to the covered trans-
19 action from continuing informal discus-
20 sions with the Committee or any Com-
21 mittee member regarding possible resub-
22 mission for review pursuant to this para-
23 graph.

24 “(D) UNILATERAL INITIATION OF RE-
25 VIEW.—The President, the Committee, or any

1 member of the Committee may move to initiate
2 a review under subparagraph (A) of—

3 “(i) any covered transaction;

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

13 “(iii) any covered transaction that has
14 previously been reviewed or investigated
15 under this section, if any party to the
16 transaction or the entity resulting from
17 consummation of the transaction inten-
18 tionally materially breaches a mitigation
19 agreement or condition described in sub-
20 section (l)(1)(A), and—

21 “(I) such breach is certified by
22 the lead department or agency moni-
23 toring and enforcing such agreement
24 or condition as an intentional material
25 breach; and

1 “(II) such department or agency
2 certifies that there is no other remedy
3 or enforcement tool available to ad-
4 dress such breach.

5 “(E) TIMING.—Any review under this
6 paragraph shall be completed before the end of
7 the 30-day period beginning on the date of the
8 receipt of written notice under subparagraph
9 (C) by the Chairperson of the Committee, or
10 the date of the initiation of the review in ac-
11 cordance with a motion under subparagraph
12 (D).

13 “(2) NATIONAL SECURITY INVESTIGATIONS.—

14 “(A) IN GENERAL.—In each case in
15 which—

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

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

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

3 “(ii) a roll call vote pursuant to para-
4 graph (3)(A) in connection with a review
5 under paragraph (1) of any covered trans-
6 action results in at least 1 vote by a Com-
7 mittee member against approving the
8 transaction; or

9 “(iii) the Director of National Intel-
10 ligence identifies particularly complex intel-
11 ligence concerns that could threaten to im-
12 pair the national security of the United
13 States and Committee members were not
14 able to develop and agree upon measures
15 to mitigate satisfactorily those threats dur-
16 ing the initial review period under para-
17 graph (1),

18 the President, acting through the Committee,
19 shall immediately conduct an investigation of
20 the effects of the transaction on the national se-
21 curity of the United States and take any nec-
22 essary actions in connection with the trans-
23 action to protect the national security of the
24 United States.

25 “(B) TIMING.—

1 “(i) IN GENERAL.—Any investigation
2 under subparagraph (A) shall be completed
3 before the end of the 45-day period begin-
4 ning on the date of the investigation com-
5 menced.

6 “(ii) EXTENSIONS OF TIME.—The pe-
7 riod established under subparagraph (B)
8 for any investigation of a covered trans-
9 action may be extended with respect to any
10 particular investigation by the President or
11 by a rolleall vote of at least 2/3 of the
12 members of the Committee involved in the
13 investigation by the amount of time speci-
14 fied by the President or the Committee at
15 the time of the extension, not to exceed 45
16 days, as necessary to collect and fully
17 evaluate information relating to—

18 “(I) the covered transaction or
19 parties to the transaction; and

20 “(II) any effect of the trans-
21 action that could threaten to impair
22 the national security of the United
23 States.

24 “(3) APPROVAL OF CHAIRPERSON AND VICE
25 CHAIRPERSONS REQUIRED.—

1 “(A) IN GENERAL.—A review or investiga-
2 tion under this subsection of a covered trans-
3 action shall not be treated as final or complete
4 until the findings and the report resulting from
5 such review or investigation are approved by a
6 majority of the members of the Committee in a
7 roll call vote and signed by the Secretary of the
8 Treasury, the Secretary of Homeland Security,
9 and the Secretary of Commerce (and such au-
10 thority of each such Secretary may not be dele-
11 gated to any person other than the Deputy Sec-
12 retary of the Treasury, the Deputy Secretary of
13 Homeland Security, or the Deputy Secretary of
14 Commerce, respectively).

15 “(B) ADDITIONAL ACTION REQUIRED IN
16 CERTAIN CASES.—In the case of any roll call
17 vote pursuant to subparagraph (A) in connec-
18 tion with an investigation under paragraph (2)
19 of any foreign government-controlled trans-
20 action in which there is at least 1 vote by a
21 Committee member against approving the
22 transaction, the investigation shall not be treat-
23 ed as final or complete until the findings and
24 report resulting from such investigation are
25 signed by the President (in addition to the

1 Chairperson and the Vice Chairpersons of the
2 Committee under subparagraph (A)).

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

5 “(A) IN GENERAL.—The Director of Na-
6 tional Intelligence shall expeditiously carry out
7 a thorough analysis of any threat to the na-
8 tional security of the United States of any cov-
9 ered transaction, including making requests for
10 information to the Director of the Office of
11 Foreign Assets Control within the Department
12 of the Treasury and the Director of the Finan-
13 cial Crimes Enforcement Network. The Direc-
14 tor of National Intelligence also shall seek and
15 incorporate the views of all affected or appro-
16 priate intelligence agencies.

17 “(B) 30-DAY MINIMUM.—The Director of
18 National Intelligence shall be provided no less
19 than 30 days to complete the analysis required
20 under subparagraph (A), except in any instance
21 described in paragraph (2)(A)(iii).

22 “(C) INDEPENDENT ROLE OF DIRECTOR.—
23 The Director of National Intelligence shall not
24 be a member of the Committee and shall serve
25 no policy role with the Committee other than to

1 provide analysis under subparagraph (A) in
2 connection with a covered transaction.

3 “(5) RESUBMITTALS OF NOTICE AND REQUESTS
4 FOR ADDITIONAL REVIEW OR INVESTIGATION.—

5 “(A) IN GENERAL.—No provision of this
6 subsection shall be construed as prohibiting any
7 party to a covered transaction from—

8 “(i) submitting additional information
9 concerning the transaction, including any
10 proposed restructuring of the transaction
11 or any modifications to any agreements in
12 connection with the transaction, while any
13 review or investigation of the transaction is
14 on-going; or

15 “(ii) requesting a review or investiga-
16 tion of the transaction after any previous
17 review or investigation of the same or a
18 similar transaction has become final if in-
19 formation material to the prior review or
20 investigation and not previously submitted
21 to the Committee becomes known or if any
22 material change in circumstances to the
23 covered transaction has occurred since the
24 review or investigation.

1 “(B) APPROVAL OF REQUEST.—In the
2 case of a request referred to in subparagraph
3 (A)(ii), the Committee shall determine by con-
4 sensus whether to grant a request.

5 “(6) REGULATIONS.—Regulations prescribed
6 under this section shall include standard procedures
7 for—

8 “(A) submitting any notice of a proposed
9 or pending covered transaction to the Com-
10 mittee;

11 “(B) submitting a request to withdraw a
12 proposed or pending covered transaction from
13 review; and

14 “(C) resubmitting a notice of proposed or
15 pending covered transaction that was previously
16 withdrawn from review.”.

17 **SEC. 3. STATUTORY ESTABLISHMENT OF THE COMMITTEE**
18 **ON FOREIGN INVESTMENT IN THE UNITED**
19 **STATES.**

20 (a) IN GENERAL.—Section 721 of the Defense Pro-
21 duction Act of 1950 (50 U.S.C. App. 2170) is amended
22 by striking subsection (k) and inserting the following new
23 subsection:

24 “(k) COMMITTEE ON FOREIGN INVESTMENT IN THE
25 UNITED STATES.—

1 “(1) ESTABLISHMENT.—The Committee on
2 Foreign Investment in the United States established
3 pursuant to Executive Order No. 11858 shall be a
4 multi-agency committee to carry out this section and
5 such other assignments as the President may des-
6 ignate.

7 “(2) MEMBERSHIP.—The Committee shall be
8 comprised of the following members or the designee
9 of any such member:

10 “(A) The Secretary of the Treasury.

11 “(B) The Secretary of Homeland Security.

12 “(C) The Secretary of Commerce.

13 “(D) The Secretary of Defense.

14 “(E) The Secretary of State.

15 “(F) The Attorney General.

16 “(G) The Secretary of Energy.

17 “(H) The Chairman of the Council of Eco-
18 nomic Advisors.

19 “(I) The United States Trade Representa-
20 tive.

21 “(J) The Director of the Office of Manage-
22 ment and Budget.

23 “(K) The Director of the National Eco-
24 nomic Council.

1 “(L) The Director of the Office of Science
2 and Technology Policy.

3 “(M) The President’s Assistant for Na-
4 tional Security Affairs.

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

7 “(3) CHAIRPERSON; VICE CHAIRPERSONS.—The
8 Secretary of the Treasury shall be the Chairperson
9 of the Committee. The Secretary of Homeland Secu-
10 rity and the Secretary of Commerce shall be the Vice
11 Chairpersons of the Committee.

12 “(4) OTHER MEMBERS.—Subject to subsection
13 (b)(4)(B), the Chairperson of the Committee shall
14 involve the heads of such other Federal departments,
15 agencies, and independent establishments in any re-
16 view or investigation under subsection (b) as the
17 Chairperson, after consulting with the Vice Chair-
18 persons, determines to be appropriate on the basis
19 of the facts and circumstances of the transaction
20 under investigation (or the designee of any such de-
21 partment or agency head).

22 “(5) MEETINGS.—The Committee shall meet
23 upon the direction of the President or upon the call
24 of the Chairperson of the Committee without regard

1 to section 552b of title 5, United States Code (if
2 otherwise applicable).

3 “(6) COLLECTION OF EVIDENCE.—Subject to
4 subsection (c), the Committee may, for the purpose
5 of carrying out this section—

6 “(A) sit and act at such times and places,
7 take such testimony, receive such evidence, ad-
8 minister such oaths; and

9 “(B) require the attendance and testimony
10 of such witnesses and the production of such
11 books, records, correspondence, memoranda, pa-
12 pers, and documents as the Chairperson of the
13 Committee may determine advisable.

14 “(7) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated to the Sec-
16 retary of the Treasury for each of fiscal years 2007,
17 2008, 2009, and 2010, expressly and solely for the
18 operations of the Committee that are conducted by
19 the Secretary, the sum of \$10,000,000.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The first sentence of section 721(c) of the Defense Pro-
22 duction Act of 1950 (50 U.S.C. App. 2170(c)) is amend-
23 ed—

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

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

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

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

11 (1) in the matter preceding paragraph (1)—

12 (A) by striking “may” and inserting
13 “shall”; and

14 (B) by striking “among other factors”;

15 (2) by striking “and” at the end of paragraph
16 (4);

17 (3) by striking the period at the end of para-
18 graph (5) and inserting a semicolon; and

19 (4) by adding at the end the following new
20 paragraphs:

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

24 “(7) whether the covered transaction is a for-
25 eign government-controlled transaction; and

1 “(8) such other factors as the President or the
2 President’s designee may determine to be appro-
3 priate, generally or in connection with a specific re-
4 view or investigation.”.

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

6 Section 721(d) of the Defense Production Act of
7 1950 (50 U.S.C. App. 2170(d)) is amended by adding at
8 the end the following new sentence: “The United States
9 shall not be held liable for any losses or other expenses
10 incurred by any party to a covered transaction as a result
11 of actions taken under this section after a covered trans-
12 action has been consummated if the party did not submit
13 a written notice of the transaction to the Chairperson of
14 the Committee under subsection (b)(1)(C) or did not wait
15 until the completion of any review or investigation under
16 subsection (b), or the end of the 15-day period referred
17 to in this subsection, before consummating the trans-
18 action.”.

19 **SEC. 6. MITIGATION, TRACKING, AND POST-CONSUMMA-**
20 **TION MONITORING AND ENFORCEMENT.**

21 Section 721 of the Defense Production Act of 1950
22 (50 U.S.C. App. 2170) is amended by inserting after sub-
23 section (k) (as amended by section 3 of this Act) the fol-
24 lowing new subsection:

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

4 “(1) MITIGATION.—

5 “(A) IN GENERAL.—The Committee or any
6 agency designated by the Chairperson and Vice
7 Chairpersons may negotiate, enter into or im-
8 pose, and enforce any agreement or condition
9 with any party to a covered transaction in order
10 to mitigate any threat to the national security
11 of the United States.

12 “(B) RISK-BASED ANALYSIS REQUIRED.—
13 Any agreement entered into or condition im-
14 posed under subparagraph (A) shall be based
15 on a risk-based analysis of the threat to na-
16 tional security of the covered transaction.

17 “(2) TRACKING AUTHORITY FOR WITHDRAWN
18 NOTICES.—

19 “(A) IN GENERAL.—If any written notice
20 of a covered transaction that was submitted to
21 the Committee under this section is withdrawn
22 before any review or investigation by the Com-
23 mittee under subsection (b) is completed, the
24 Committee shall establish, as appropriate—

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

9 “(ii) specific timeframes for resubmit-
10 ting any such written notice; and

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

16 “(B) DESIGNATION OF AGENCY.—The
17 Committee may designate an appropriate Fed-
18 eral department or agency, other than any enti-
19 ty of the intelligence community (as defined in
20 the National Security Act of 1947), as the lead
21 agency to carry out the requirements of sub-
22 paragraph (A) with respect to any covered
23 transaction that is subject to such subpara-
24 graph.

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

3 “(A) DESIGNATION OF AGENCY.—The
4 Committee shall designate a Federal depart-
5 ment or agency as the lead agency to negotiate,
6 modify, monitor, and enforce any agreement en-
7 tered into or condition imposed under para-
8 graph (1) with respect to a covered transaction
9 based on the expertise with and knowledge of
10 the issues related to such transaction on the
11 part of the designated department or agency.

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

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

21 “(I) provide periodic reports to
22 the Chairperson and Vice Chair-
23 persons of the Committee on the im-
24 plementation of such agreement or
25 condition; and

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

8 “(ii) MODIFICATION REPORTS.—The
9 Federal department or agency designated
10 by the Committee as a lead agency under
11 subparagraph (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 Chair-
17 persons of the Committee on any
18 modification to any such agreement or
19 condition imposed with respect to the
20 transaction; and

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

1 that may have a material interest in
2 such 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
14 to take any action authorized under subsection
15 (d) with respect to the transaction, after the
16 end of 15-day period referred to in subsection
17 (d), the Chairperson or a Vice Chairperson of
18 the Committee shall submit a written report on
19 the findings or actions of the Committee with
20 respect to such investigation, the determination
21 of whether or not to take action under sub-
22 section (d), an explanation of the findings
23 under subsection (e), and the factors considered
24 under subsection (f), with respect to such trans-
25 action, 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;
5 and

6 “(iii) the chairman and ranking mem-
7 ber of each committee of the House of
8 Representatives and the Senate with juris-
9 diction over any aspect of the covered
10 transaction and its possible effects on na-
11 tional security, including the Committee on
12 International Relations, the Committee on
13 Financial Services, and the Committee on
14 Energy and Commerce of the House of
15 Representatives.

16 “(B) NOTICE AND BRIEFING REQUIRE-
17 MENT.—If a written request for a briefing on a
18 covered transaction is submitted to the Com-
19 mittee by any Senator or Member of Congress
20 who receives a report on the transaction under
21 subparagraph (A), the Chairperson or a Vice
22 Chairperson (or such other person as the Chair-
23 person or a Vice Chairperson may designate)
24 shall provide 1 classified briefing to each House
25 of the Congress from which any such briefing

1 request originates in a secure facility of appro-
2 priate size and location that shall be open only
3 to the Majority Leader and the Minority Leader
4 of the Senate, the Speaker and the Minority
5 Leader of the House of Representatives, (as the
6 case may be) the chairman and ranking mem-
7 ber of each committee of the House of Rep-
8 resentatives or the Senate (as the case may be)
9 with jurisdiction over any aspect of the covered
10 transaction and its possible effects on national
11 security, including the Committee on Inter-
12 national Relations, the Committee on Financial
13 Services, and the Committee on Energy and
14 Commerce of the House of Representatives, and
15 appropriate staff members who have security
16 clearance.

17 “(2) APPLICATION OF OTHER PROVISION.—

18 “(A) IN GENERAL.—The disclosure of in-
19 formation under this subsection shall be con-
20 sistent with the requirements of subsection (c).
21 Members of Congress and staff of either House
22 or any committee of the Congress shall be sub-
23 ject to the same limitations on disclosure of in-
24 formation as are applicable under such sub-
25 section.

1 “(B) PROPRIETARY INFORMATION.—Pro-
2 prietary information which can be associated
3 with a particular party to a covered transaction
4 shall be furnished in accordance with subpara-
5 graph (A) only to a committee of the Congress
6 and only when the committee provides assur-
7 ances of confidentiality, unless such party oth-
8 erwise consents in writing to such disclosure.”.

9 (b) SEMI-ANNUAL REPORT.—Section 721 of the De-
10 fense Production Act of 1950 (50 U.S.C. App. 2170) is
11 amended by inserting after subsection (l) (as added by sec-
12 tion 6 of this Act) the following new subsection:

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

14 “(1) IN GENERAL.—The Chairperson of the
15 Committee shall transmit a report to the chairman
16 and ranking member of each committee of the
17 House of Representatives and the Senate with juris-
18 diction over any aspect of the report, including the
19 Committee on International Relations, the Com-
20 mittee on Financial Services, and the Committee on
21 Energy and Commerce of the House of Representa-
22 tives, before January 31 and July 31 of each year
23 on all the reviews and investigations of covered
24 transactions conducted under subsection (b) during
25 the 6-month period covered by the report.

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

5 “(A) A list of all notices filed and all re-
6 views or investigations conducted during the pe-
7 riod with basic information on each party to the
8 transaction, the nature of the business activities
9 or products of all pertinent persons, along with
10 information about the status of the review or
11 investigation, information on any withdrawal
12 from the process, any rollover votes by the Com-
13 mittee under this section, any extension of time
14 for any investigation, and any presidential deci-
15 sion or action under this section.

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

20 “(C) Cumulative and, as appropriate,
21 trend information on the business sectors in-
22 volved in the filings which have been made, and
23 the countries from which the investments have
24 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
4 later re-filed such notices, or, alternatively,
5 abandoned 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.

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

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

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

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

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

14 “(B) CRITICAL TECHNOLOGIES DE-
15 FINED.—For purposes of this paragraph, the
16 term ‘critical technologies’ means technologies
17 identified under title VI of the National Science
18 and Technology Policy, Organization, and Pri-
19 orities Act of 1976 or other critical technology,
20 critical components, or critical technology items
21 essential to national defense or national security
22 identified pursuant to this section.

23 “(C) RELEASE OF UNCLASSIFIED
24 STUDY.—That portion of the semi-annual re-
25 port under paragraph (1) that is required by

1 this paragraph may be classified. An unclassi-
2 fied version of that portion of the report shall
3 be made available to the public.”.

4 (c) INVESTIGATION BY INSPECTOR GENERAL.—

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

14 (2) REPORT TO THE CONGRESS.—Before the
15 end of the 270-day period beginning on the date of
16 the enactment of this Act, the Inspector General of
17 the Department of the Treasury shall submit a re-
18 port to the chairman and ranking member of each
19 committee of the House of Representatives and the
20 Senate with jurisdiction over any aspect of the re-
21 port, including the Committee on International Rela-
22 tions, the Committee on Financial Services, and the
23 Committee on Energy and Commerce of the House
24 of Representatives, on the investigation under para-

1 graph (1) containing the findings and conclusions of
2 the Inspector 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
8 Secretary of Commerce, shall conduct a study on in-
9 vestments in the United States, especially invest-
10 ments in critical infrastructure and industries affect-
11 ing national 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 con-
17 trolled by or acting on behalf of a foreign gov-
18 ernment, or persons of foreign countries which
19 do not ban organizations designated by the Sec-
20 retary of State as foreign terrorist organiza-
21 tions.

22 (2) REPORT.—Before the end of the 30-day pe-
23 riod beginning upon completion of the study under
24 paragraph (1) or in the next semi-annual report
25 under section 721(m) of the Defense Production Act

1 of 1950 (as added by subsection (b)), the Secretary
2 of the Treasury shall submit a report to the Con-
3 gress, for transmittal to all appropriate committees
4 of the Senate and the House of Representatives,
5 containing the findings and conclusions of the Sec-
6 retary with respect to the study, together with an
7 analysis of the effects of such investment on the na-
8 tional security of the United States and on any ef-
9 forts to address those effects.

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

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

15 “(n) CERTIFICATION OF NOTICES AND ASSUR-
16 ANCES.—Each notice required to be submitted, by a party
17 to a covered transaction, to the President or the Presi-
18 dent’s designee under this section and regulations pre-
19 scribed under such section, and any information submitted
20 by any such party in connection with any action for which
21 a report is required pursuant to paragraph (3)(B)(ii) of
22 subsection (l) with respect to the implementation of any
23 mitigation agreement or condition described in paragraph
24 (1)(A) of such subsection, or any material change in cir-
25 cumstances, shall be accompanied by a written statement

1 by the chief executive officer or the designee of the person
2 required to submit such notice or information certifying
3 that, to the best of the person’s knowledge and belief—

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

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

9 **SEC. 9. REGULATIONS.**

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

13 “(h) REGULATIONS.—The President shall direct the
14 issuance of regulations to carry out this section. Such reg-
15 ulations shall, to the extent possible, minimize paperwork
16 burdens and shall to the extent possible coordinate report-
17 ing requirements under this section with reporting re-
18 quirements under any other provision of Federal law.”.

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

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

22 “(i) EFFECT ON OTHER LAW.—No provision of this
23 section shall be construed as altering or affecting any
24 other authority, process, regulation, investigation, enforce-
25 ment measure, or review provided by or established under

1 any other provision of Federal law, including the Inter-
2 national Emergency Economic Powers Act, or any other
3 authority of the President or the Congress under the Con-
4 stitution of the United States.”.

Passed the House of Representatives July 26, 2006.

Attest:

KAREN L. HAAS,

Clerk.

Calendar No. 538

109TH CONGRESS
2^D SESSION
H. R. 5337

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.

JULY 27 (legislative day, JULY 26), 2006

Received; read twice and placed on the calendar