

114TH CONGRESS
2D SESSION

H. R. 5665

To amend the Defense Production Act of 1950 to provide for a net benefit review of certain covered transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 7, 2016

Ms. DELAURO (for herself, Mr. ELLISON, Ms. SLAUGHTER, and Mr. POCAN) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Defense Production Act of 1950 to provide for a net benefit review of certain covered transactions, 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 “Foreign Investment
5 and Economic Security Act of 2016”.

6 **SEC. 2. REVIEW OF GREENFIELD INVESTMENTS.**

7 Section 721(a)(3) of the Defense Production Act of
8 1950 (50 U.S.C. App. 2170(a)(3)) is amended—

1 (1) by striking “means any merger” and insert-
2 ing the following: “means—

3 “(A) any merger”;

4 (2) by striking the period and inserting “;
5 and”; and

6 (3) by adding at the end the following:

7 “(B) any construction of a new facility in
8 the United States by any foreign person.”.

9 **SEC. 3. NET BENEFIT REVIEW.**

10 (a) IN GENERAL.—Section 721 of the Defense Pro-
11 duction Act of 1950 (50 U.S.C. App. 2170) is amended—

12 (1) in subsection (b)—

13 (A) in the heading for such subsection, by
14 inserting “AND NET BENEFIT” after “NA-
15 TIONAL SECURITY”;

16 (B) in paragraph (1)—

17 (i) in the heading for such paragraph,
18 by inserting “AND NET BENEFIT” after
19 “NATIONAL SECURITY”;

20 (ii) in subparagraph (A), by striking
21 clauses (i) and (ii) and inserting the fol-
22 lowing:

23 “(i) shall—

24 “(I) review the covered trans-
25 action to determine the effects of the

1 transaction on the national security of
2 the United States; and

3 “(II) consider the factors speci-
4 fied in subsection (f) for such pur-
5 pose, as appropriate; and

6 “(ii) shall review the covered trans-
7 action to determine whether such trans-
8 action is of net benefit to the United
9 States, as provided under subsection (o).”;
10 and

11 (iii) by adding at the end the fol-
12 lowing:

13 “(G) MANDATORY NET BENEFIT REVIEW
14 FOR CERTAIN COVERED TRANSACTIONS.—The
15 President and the Committee shall initiate a
16 net benefit review of a covered transaction
17 under subparagraph (A)(ii) if such transaction
18 meets the requirements of paragraphs (1) and
19 (2) of section 7A(a) of the Clayton Act (15
20 U.S.C. 18a(a).”; and

21 (C) in paragraph (3)(A), by inserting “na-
22 tional security” before “review” each place it
23 appears in the heading and text of such sub-
24 paragraph; and

25 (2) by adding at the end the following:

1 “(o) PERFORMANCE OF NET BENEFIT DETERMINA-
2 TION.—

3 “(1) FACTORS TO BE CONSIDERED.—For pur-
4 poses of carrying out the net benefit determination
5 under subsection (b)(1)(A)(ii), the President, acting
6 through the Committee, shall consider—

7 “(A) the effect on the level of economic ac-
8 tivity in the United States on—

9 “(i) the level and quality of employ-
10 ment;

11 “(ii) resource processing;

12 “(iii) the utilization of parts and serv-
13 ices produced in the United States;

14 “(iv) the utilization of products, parts,
15 and services imported into the United
16 States; and

17 “(v) exports from the United States;

18 “(B) the effect of the proposed or pending
19 transaction on productivity, industrial effi-
20 ciency, technological development, technology
21 transfers, and product innovation in the United
22 States;

23 “(C) the effect of the proposed or pending
24 transaction on competition within any industry

1 in the United States or between the United
2 States and other countries;

3 “(D) the compatibility of the proposed or
4 pending transaction with national industrial
5 and economic policies;

6 “(E) the effect on the public health, safety,
7 and well-being of United States consumers;

8 “(F) in the case of a covered transaction
9 that is a foreign government-influenced trans-
10 action—

11 “(i) the governance and commercial
12 orientation of the foreign person engaging
13 in such transaction;

14 “(ii) how and the extent to which the
15 foreign person engaging in such trans-
16 action is owned or controlled by a foreign
17 government or its conduct and operations
18 are influenced by a foreign government, in-
19 cluding considering the stated government
20 policies of the country of origin of the for-
21 eign person regarding government support
22 or policies relating to the economic sector
23 involved in such transaction;

24 “(iii) whether the foreign person en-
25 gaging in such transaction—

1 “(I) adheres to United States
2 standards of corporate governance (in-
3 cluding commitments to transparency
4 and disclosure, independent members
5 of the board of directors, independent
6 audit committees, and equitable treat-
7 ment of shareholders);

8 “(II) adheres to United States
9 laws and practices; and

10 “(III) is a foreign person of a
11 country whose government has ade-
12 quately engaged with the Securities
13 and Exchange Commission and the
14 Public Company Accounting Oversight
15 Board in order to promote and ensure
16 adequate transparency; and

17 “(iv) whether the foreign person en-
18 gaging in such transaction will likely oper-
19 ate on a commercial basis if such trans-
20 action is completed, including with regard
21 to—

22 “(I) where to export;

23 “(II) where to process;

1 “(III) the participation of United
2 States citizens in its operations in the
3 United States and elsewhere;

4 “(IV) the impact of the invest-
5 ment on productivity and industrial
6 efficiency in the United States;

7 “(V) support of on-going innova-
8 tion, research, and development in the
9 United States;

10 “(VI) sourcing patterns; and

11 “(VII) the appropriate level of
12 capital expenditures to maintain the
13 United States business in a globally
14 competitive position; and

15 “(G) such other factors as the Committee
16 determines appropriate.

17 “(2) DETERMINING NET BENEFIT.—In making
18 a net benefit determination under subsection
19 (b)(1)(A)(ii)—

20 “(A) judgments will be made both in meas-
21 uring the effects of a proposed or pending
22 transaction in relation to the relevant individual
23 factors under paragraph (1) and in measuring
24 the aggregate net effect after offsetting the

1 negative effects, if any, against the positive
2 ones; and

3 “(B) a proposed or pending transaction
4 will be determined to be of net benefit to the
5 United States when the aggregate net effect is
6 positive, regardless of its extent over the short
7 and long term.

8 “(3) RIGHT TO APPEAL; FINAL DETERMINA-
9 TION.—

10 “(A) APPEAL OF DETERMINATION.—If the
11 Committee makes a determination that the cov-
12 ered transaction will not be of net benefit to the
13 United States, the parties to the covered trans-
14 action may, within the 30-day period following
15 such determination, submit additional informa-
16 tion to the Committee to demonstrate that the
17 transaction will be of net benefit to the United
18 States.

19 “(B) FINAL DETERMINATION.—The Com-
20 mittee shall—

21 “(i) make a final determination of
22 whether the covered transaction will be of
23 net benefit to the United States before the
24 end of the 30-day period beginning on the

1 date that additional information is sub-
2 mitted pursuant to subparagraph (A); and

3 “(ii) if such determination is that the
4 covered transaction will not be of net ben-
5 efit to the United States, refer such deter-
6 mination to the President.

7 “(4) CERTIFICATIONS TO CONGRESS.—Notwith-
8 standing subsection (b)(3), upon a final determina-
9 tion by the Committee under this subsection, the
10 chairperson and the head of the lead agency shall
11 make certifications to the Congress on the net ben-
12 efit determination that are as close as practicable to
13 the certifications required under subsection (b)(3)
14 for the national security review.

15 “(5) ACTION BY PRESIDENT AFTER NET BEN-
16 EFIT REVIEW.—

17 “(A) IN GENERAL.—If the Committee re-
18 fers a determination to the President pursuant
19 to paragraph (3)(ii), the President shall, within
20 the 15-day period beginning on the date of such
21 referral, review such determination and an-
22 nounce whether the President determines the
23 covered transaction is of net benefit to the
24 United States.

1 “(B) FACTORS TO BE CONSIDERED.—For
2 purposes of making a determination under sub-
3 paragraph (A), the President shall consider,
4 among other factors each of the factors de-
5 scribed in paragraph (1), as appropriate.

6 “(C) PROHIBITION OF CERTAIN TRANS-
7 ACTIONS.—If the President, pursuant to sub-
8 paragraph (A), determines that a covered trans-
9 action is not of net benefit to the United States,
10 such covered transaction is prohibited.

11 “(D) ENFORCEMENT.—The President
12 shall direct the Attorney General of the United
13 States to seek appropriate relief, including di-
14 vestment relief, in the district courts of the
15 United States, in order to implement and en-
16 force this paragraph.

17 “(E) DETERMINATIONS NONREVIEW-
18 ABLE.—A determination of the President under
19 this paragraph shall not be subject to judicial
20 review.

21 “(6) COMMITTEE MEMBERSHIP FOR PURPOSES
22 OF A NET BENEFIT DETERMINATION.—For purposes
23 of carrying out the net benefit determination under
24 subsection (b)(1)(A)(ii) and this subsection, the

1 Committee shall be composed of the following mem-
2 bers or the designee of any such member:

3 “(A) The Attorney General of the United
4 States.

5 “(B) The Secretary of Commerce.

6 “(C) The Secretary of Labor.

7 “(D) The Secretary of the Treasury.

8 “(E) The United States Trade Representa-
9 tive.

10 “(F) If the President determines that the
11 covered transaction may affect the agricultural
12 sector, including food safety, the Secretary of
13 Agriculture.

14 “(G) If the President determines that the
15 covered transaction may affect the public
16 health, including food safety, the Secretary of
17 Health and Human Services.

18 “(7) FOREIGN GOVERNMENT-INFLUENCED
19 TRANSACTION DEFINED.—For purposes of this sub-
20 section, the term ‘foreign government-influenced
21 transaction’ means any covered transaction where
22 the foreign person engaging in such transaction is
23 owned, controlled, or influenced, directly or indi-
24 rectly, by a foreign government.”.

1 (b) RULEMAKING.—Not later than the end of the
2 180-day period beginning on the date of the enactment
3 of this Act, the President shall issue regulations to carry
4 out section 721(o) of the Defense Production Act of 1950,
5 as added by subsection (a).

○