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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Foreign Investment and Economic Security Act of 2016”.

SEC. 2. REVIEW OF GREENFIELD INVESTMENTS.

(1) by striking “means any merger” and inserting the following: “means—
   “(A) any merger”; 
(2) by striking the period and inserting “; and”;
   (3) by adding at the end the following:
   “(B) any construction of a new facility in
   the United States by any foreign person.”.

SEC. 3. NET BENEFIT REVIEW.

(a) IN GENERAL.—Section 721 of the Defense Pro-
duction Act of 1950 (50 U.S.C. App. 2170) is amended—
(1) in subsection (b)—
   (A) in the heading for such subsection, by
   inserting “AND NET BENEFIT” after “Na-
tional Security”; 
   (B) in paragraph (1)—
      (i) in the heading for such paragraph, 
      by inserting “AND NET BENEFIT” after 
      “NATIONAL SECURITY”; 
      (ii) in subparagraph (A), by striking 
      clauses (i) and (ii) and inserting the fol-
      lowing:
      “(i) shall—
      “(I) review the covered trans-
action to determine the effects of the
transaction on the national security of
the United States; and

“(II) consider the factors specified in subsection (f) for such purpose, as appropriate; and

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

and

(iii) by adding at the end the follow-

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

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

(2) by adding at the end the following:
“(o) Performance of Net Benefit Determination.—

“(1) Factors to be considered.—For purposes of carrying out the net benefit determination under subsection (b)(1)(A)(ii), the President, acting through the Committee, shall consider—

“(A) the effect on the level of economic activity in the United States on—

“(i) the level and quality of employment;

“(ii) resource processing;

“(iii) the utilization of parts and services produced in the United States;

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

“(v) exports from the United States;

“(B) the effect of the proposed or pending transaction on productivity, industrial efficiency, technological development, technology transfers, and product innovation in the United States;

“(C) the effect of the proposed or pending transaction on competition within any industry
in the United States or between the United States and other countries;

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

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

“(F) in the case of a covered transaction that is a foreign government-influenced transaction—

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

“(ii) how and the extent to which the foreign person engaging in such transaction is owned or controlled by a foreign government or its conduct and operations are influenced by a foreign government, including considering the stated government policies of the country of origin of the foreign person regarding government support or policies relating to the economic sector involved in such transaction;

“(iii) whether the foreign person engaging in such transaction—
“(I) adheres to United States standards of corporate governance (including commitments to transparency and disclosure, independent members of the board of directors, independent audit committees, and equitable treatment of shareholders);

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

“(III) is a foreign person of a country whose government has adequately engaged with the Securities and Exchange Commission and the Public Company Accounting Oversight Board in order to promote and ensure adequate transparency; and

“(iv) whether the foreign person engaging in such transaction will likely operate on a commercial basis if such transaction is completed, including with regard to—

“(I) where to export;

“(II) where to process;
“(III) the participation of United States citizens in its operations in the United States and elsewhere;

“(IV) the impact of the investment on productivity and industrial efficiency in the United States;

“(V) support of on-going innovation, research, and development in the United States;

“(VI) sourcing patterns; and

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

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

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

“(A) judgments will be made both in measuring the effects of a proposed or pending transaction in relation to the relevant individual factors under paragraph (1) and in measuring the aggregate net effect after offsetting the
negative effects, if any, against the positive ones; and

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

“(3) RIGHT TO APPEAL; FINAL DETERMINATION.—

“(A) APPEAL OF DETERMINATION.—If the Committee makes a determination that the covered transaction will not be of net benefit to the United States, the parties to the covered transaction may, within the 30-day period following such determination, submit additional information to the Committee to demonstrate that the transaction will be of net benefit to the United States.

“(B) FINAL DETERMINATION.—The Committee shall—

“(i) make a final determination of whether the covered transaction will be of net benefit to the United States before the end of the 30-day period beginning on the
date that additional information is submitted pursuant to subparagraph (A); and

“(ii) if such determination is that the covered transaction will not be of net benefit to the United States, refer such determination to the President.

“(4) CERTIFICATIONS TO CONGRESS.—Notwithstanding subsection (b)(3), upon a final determination by the Committee under this subsection, the chairperson and the head of the lead agency shall make certifications to the Congress on the net benefit determination that are as close as practicable to the certifications required under subsection (b)(3) for the national security review.

“(5) ACTION BY PRESIDENT AFTER NET BENEFIT REVIEW.—

“(A) IN GENERAL.—If the Committee refers a determination to the President pursuant to paragraph (3)(ii), the President shall, within the 15-day period beginning on the date of such referral, review such determination and announce whether the President determines the covered transaction is of net benefit to the United States.
“(B) Factors to be Considered.—For purposes of making a determination under sub-paragraph (A), the President shall consider, among other factors each of the factors described in paragraph (1), as appropriate.

“(C) Prohibition of Certain Transactions.—If the President, pursuant to sub-paragraph (A), determines that a covered transaction is not of net benefit to the United States, such covered transaction is prohibited.

“(D) Enforcement.—The President shall direct the Attorney General of the United States to seek appropriate relief, including divestment relief, in the district courts of the United States, in order to implement and enforce this paragraph.

“(E) Determinations Nonreviewable.—A determination of the President under this paragraph shall not be subject to judicial review.

“(6) Committee Membership for Purposes of a Net Benefit Determination.—For purposes of carrying out the net benefit determination under subsection (b)(1)(A)(ii) and this subsection, the
Committee shall be composed of the following members or the designee of any such member:

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

“(B) The Secretary of Commerce.

“(C) The Secretary of Labor.

“(D) The Secretary of the Treasury.

“(E) The United States Trade Representative.

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

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

“(7) FOREIGN GOVERNMENT-INFLUENCED TRANSACTION DEFINED.—For purposes of this subsection, the term ‘foreign government-influenced transaction’ means any covered transaction where the foreign person engaging in such transaction is owned, controlled, or influenced, directly or indirectly, by a foreign government.”
(b) RULEMAKING.—Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the President shall issue regulations to carry out section 721(o) of the Defense Production Act of 1950, as added by subsection (a).