

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.

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## 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

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## 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).

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