

113TH CONGRESS
2D SESSION

H. R. 5581

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

SEPTEMBER 18, 2014

Ms. DELAURO 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 2014”.

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—

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

1 “(A) any merger”;

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

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

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

7 **SEC. 3. NET BENEFIT REVIEW.**

8 (a) IN GENERAL.—Section 721 of the Defense Pro-
9 duction Act of 1950 (50 U.S.C. App. 2170) is amended—
10 (1) in subsection (b)—

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

14 (B) in paragraph (1)—

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

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

21 “(i) shall—

22 “(I) review the covered trans-
23 action to determine the effects of the
24 transaction on the national security of
25 the United States; and

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

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

9 (iii) by adding at the end the fol-
 10 lowing:

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

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

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

24 “(o) PERFORMANCE OF NET BENEFIT DETERMINA-
 25 TION.—

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

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

7 “(i) the level and quality of employ-
8 ment;

9 “(ii) resource processing;

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

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

15 “(v) exports from the United States;

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

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

1 “(D) the compatibility of the proposed or
2 pending transaction with national industrial,
3 economic, and cultural policies;

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

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

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

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

22 “(iii) whether the foreign person en-
23 gaging in such transaction—

24 “(I) adheres to United States
25 standards of corporate governance (in-

1 including commitments to transparency
2 and disclosure, independent members
3 of the board of directors, independent
4 audit committees, and equitable treat-
5 ment of shareholders);

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

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

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

20 “(I) where to export;

21 “(II) where to process;

22 “(III) the participation of United
23 States citizens in its operations in the
24 United States and elsewhere;

1 “(IV) the impact of the invest-
2 ment on productivity and industrial
3 efficiency in the United States;

4 “(V) support of on-going innova-
5 tion, research, and development in the
6 United States;

7 “(VI) sourcing patterns; and

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

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

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

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

24 “(B) a proposed or pending transaction
25 will be determined to be of net benefit to the

1 United States when the aggregate net effect is
2 positive, regardless of its extent over the short-
3 and long-term.

4 “(3) RIGHT TO APPEAL; FINAL DETERMINA-
5 TION.—

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

15 “(B) FINAL DETERMINATION.—The Com-
16 mittee shall—

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

23 “(ii) if such determination is that the
24 covered transaction will not be of net ben-

1 efit to the United States, refer such deter-
2 mination to the President.

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

11 “(5) ACTION BY PRESIDENT AFTER NET BEN-
12 EFIT REVIEW.—

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

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

1 “(C) PROHIBITION OF CERTAIN TRANS-
2 ACTIONS.—If the President, pursuant to sub-
3 paragraph (A), determines that a covered trans-
4 action is not of net benefit to the United States,
5 such covered transaction is prohibited.

6 “(D) ENFORCEMENT.—The President
7 shall direct the Attorney General of the United
8 States to seek appropriate relief, including di-
9 vestment relief, in the district courts of the
10 United States, in order to implement and en-
11 force this paragraph.

12 “(E) DETERMINATIONS NONREVIEW-
13 ABLE.—A determination of the President under
14 this paragraph shall not be subject to judicial
15 review.

16 “(6) COMMITTEE MEMBERSHIP FOR PURPOSES
17 OF A NET BENEFIT DETERMINATION.—For purposes
18 of carrying out the net benefit determination under
19 subsection (b)(1)(A)(ii) and this subsection, the
20 Committee shall be composed of the following mem-
21 bers or the designee of any such member:

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

24 “(B) The Secretary of Commerce.

25 “(C) The Secretary of Labor.

1 “(D) The Secretary of the Treasury.

2 “(E) The United States Trade Representa-
3 tive.

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

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

12 “(7) FOREIGN GOVERNMENT-INFLUENCED
13 TRANSACTION DEFINED.—For purposes of this sub-
14 section, the term ‘foreign government-influenced
15 transaction’ means any covered transaction where
16 the foreign person engaging in such transaction is
17 owned, controlled, or influenced, directly or indi-
18 rectly, by a foreign government.”.

19 (b) RULEMAKING.—Not later than the end of the
20 180-day period beginning on the date of the enactment
21 of this Act, the President shall issue regulations to carry
22 out section 721(o) of the Defense Production Act of 1950,
23 as added by subsection (a).

○