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*Exon-Florio Foreign Investment Provision: Comparison of
H.R. 5337 and S. 3549*

James K. Jackson, Foreign Affairs, Defense, and Trade Division

January 24, 2007

Abstract. During the Second Session of the 109th Congress, Members of Congress introduced over two dozen measures to address various concerns with foreign investment that arose from the proposed purchase of the British-owned P&O Ports by Dubai Ports World in early 2006. Of the measures that were introduced, H.R. 5337 and S. 3549 from the House and Senate, respectively, garnered significant support and passed their respective bodies on July 26, 2006. The 109th Congress ended before a Conference Committee could be convened on H.R. 5337 or S. 3549 and both measures lapsed. The measures likely will be taken up by the 110th Congress.

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CRS Report for Congress

Exon-Florio Foreign Investment Provision: Comparison of H.R. 5337 and S. 3549

Updated January 24, 2007

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Prepared for Members and
Committees of Congress

Exon-Florio Foreign Investment Provision: Comparison of H.R. 5337 and S. 3549

Summary

During the Second Session of the 109th Congress, Members of Congress introduced over two dozen measures to address various concerns with foreign investment that arose from the proposed purchase of the British-owned P&O Ports by Dubai Ports World in early 2006. Of the measures that were introduced, **H.R. 5337** and **S. 3549** from the House and Senate, respectively, garnered significant support and passed their respective bodies on July 26, 2006. The 109th Congress ended before a Conference Committee could be convened on H.R. 5337 or S. 3549 and both measures lapsed. The measures likely will be taken up by the 110th Congress.

The two measures represent efforts by Members of Congress to address six perceived problems: 1) that the principal members of the interagency Committee on Foreign Investment in the United States (CFIUS) at times seem not to be well informed of the outcomes of reviews and investigations regarding proposed or pending investment transactions; 2) that CFIUS has interpreted incorrectly the requirements under current statutes for investigations of transactions that involve firms that are owned or controlled by a foreign government; 3) that reporting requirements under current statutes do not provide Congress with enough information about the operations and actions of CFIUS for Members to fulfill their oversight responsibilities; 4) that CFIUS exercises too much discretion in its ability to choose which transactions it investigates; 5) that the definition of national security used by CFIUS is no longer adequate in a post-September 11th world; and 6) that time constraints placed on CFIUS to complete reviews and investigations of investment transactions do not provide adequate time in some instances for the Committee to complete its activities.

This report provides background information on the Committee on Foreign Investment in the United States and on the Exon-Florio provision. In addition, the report provides an overview of H.R. 5337 and S. 3549 and a comparison of provisions in the two measures. This report will be updated as warranted by events.

Contents

Overview	1
The Committee on Foreign Investment in the United States (CFIUS)	2
The Exon-Florio Provision	2
The “Byrd Amendment”	3
Exon-Florio Provision After September 11, 2001	6
Overview of H.R. 5337 and S. 3549	7
Side-by-Side Comparison of H.R. 5337 and S. 3549	10
CFIUS Investigations	10
Composition of CFIUS	17
Presidential Actions	19
Findings	19
Factors Used in Findings	20
Confidentiality	21
Mitigation and Tracking	22
Congressional Oversight	24

Exon-Florio Foreign Investment Provision: Comparison of H.R. 5337 and S. 3549

Overview

During the Second Session of the 109th Congress, Members of Congress introduced over two dozen measures to address various concerns with foreign investment that arose from the proposed purchase of the British-owned P&O Ports¹ by Dubai Ports World² in early 2006.³ In particular, the transaction spurred some Members to question the effectiveness of the relatively obscure interagency group, the Committee on Foreign Investment in the United States (CFIUS). The group has been charged with spearheading the Administration's policy on foreign investment and with conducting national security reviews under the Exon-Florio provision of the Defense Production Act (50 U.S.C. Sec. 2170). Of the measures that were introduced, H.R. 5337 and S. 3549 from the House and Senate, respectively, garnered significant support and passed their respective bodies on July 26, 2006. The 109th Congress ended before a Conference Committee could be convened on H.R. 5337 or S. 3549 and both measures lapsed. The 110th Congress likely will consider similar measures.

The two measures are different in a number of ways, but they represent efforts by Members to correct perceived problems with the current process that arose during consideration of the Dubai Ports World transaction. In particular, Members generally expressed concerns about six areas. First, Members were concerned that the principal members of CFIUS at times seem not to be well informed of the outcomes of reviews and investigations made by CFIUS regarding proposed or pending investment transactions, because the duty for reviewing such transactions has been delegated in most agencies to lower-level personnel. Second, some Members argued that CFIUS was interpreting incorrectly the requirements under current statutes for investigations of transactions that involve firms that are owned or controlled by a foreign government. Third, many Members argued that the current statutes do not provide Congress with enough information about the operations and actions of

¹ Peninsular and Oriental Steam Company is a leading ports operator and transport company with operations in ports, ferries, and property development. It operates container terminals and logistics operations in over 100 ports and has a presence in 18 countries.

² Dubai Ports World was created in November 2005 by integrating Dubai Ports Authority and Dubai Ports International. It is one of the largest commercial port operators in the world with operations in the Middle East, India, Europe, Asia, Latin America, the Caribbean, and North America.

³ For additional information, see CRS Report RL33312, *The Exon-Florio National Security Test for Foreign Investment*, by James K. Jackson; and CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson.

CFIUS for them to fulfill their oversight responsibilities. Fourth, some Members argued that CFIUS exercises too much discretion in its ability to choose which transactions it investigates and that it needs to be held more accountable to Congress for its decisions regarding reviews and investigations of investment transactions. Fifth, some Members questioned the definition of national security used by the Committee as being too narrowly interpreted and out of sync with the post September 11th view of national security. Last, some Members were concerned that the time constraints placed on CFIUS to complete reviews and investigations of investment transactions do not provide adequate time in some instances for the Committee to complete its activities.

The Committee on Foreign Investment in the United States (CFIUS)

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy. CFIUS was established by an Executive Order of President Ford in 1975 with broad responsibilities and few specific powers.⁴ The Committee is housed in the Department of the Treasury and has generally operated in relative obscurity. Initially, CFIUS was established with six members, but the membership has been expanded over time to twelve through various Executive Orders. The twelve members include the Secretaries of State, the Treasury, Defense, Homeland Security, and Commerce; the United States Trade Representative; the Chairman of the Council of Economic Advisers; the Attorney General; the Director of the Office of Management and Budget; the Director of the Office of Science and Technology Policy; the Assistant to the President for National Security Affairs; and the Assistant to the President for Economic Policy.⁵

The Exon-Florio Provision

The Exon-Florio provision (Section 2170 of the Defense Production Act) grants the President broad discretionary authority to take what action he considers to be “appropriate” to suspend or prohibit proposed or pending foreign acquisitions, mergers, or takeovers of persons engaged in interstate commerce in the United States which “threaten to impair the national security.” The statute indicates that the

⁴ Executive Order 11858 (b), May 7, 1975, 40 F.R. 20263.

⁵ Executive Order 11858 of May 7, 1975, 40 F.R. 20263 established the Committee with six members: the Secretaries of State, the Treasury, Defense, Commerce, and the Assistant to the President for Economic Affairs, and the Executive Director of the Council on International Economic Policy. Executive Order 12188, January 2, 1980, 45 F.R. 969, added the United States Trade Representative and substituted the Chairman of the Council of Economic Advisers for the Executive Director of the Council on International Economic Policy. Executive Order 12661, December 27, 1988, 54 F.R. 779, added the Attorney General and the Director of the Office of Management and Budget. Executive Order 12860, September 3, 1993, 58 F.R. 47201, added the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs, and the Assistant to the President for Economic Policy. Executive Order 13286, Section 57, February 28, 2003, added the Secretary of Homeland Security.

President “may” make an investigation to determine the effects on national security of such investments. Most importantly, however, Congress directed that the President can exercise this discretionary authority “only if” he determines that two conditions exist: 1) other U.S. laws are inadequate or inappropriate to protect the national security; and 2) that he must have “credible evidence” that the foreign investment will impair the national security. For the purposes of this legislation, Congress purposely did not define national security, but intended to have the term interpreted broadly without limitation to a particular industry.⁶

In 1988, Congress approved the Exon-Florio provision as part of the Omnibus Trade Act.⁷ Through Executive Order 12661, President Reagan implemented provisions of the Omnibus Trade Act, and he delegated his authority to administer the Exon-Florio provision to CFIUS,⁸ particularly to conduct reviews of foreign investment, to undertake investigations, and to make recommendations, although the statute itself does not specifically mention CFIUS. As a result of President Reagan’s action, CFIUS was transformed from a purely administrative body with limited authority to review and analyze data on foreign investment to one with a broad mandate and significant authority to advise the President on foreign investment transactions and to recommend that some transactions be suspended or prohibited. The Committee has 30 days to decide whether to investigate a case and an additional 45 days to make its recommendation. Once the recommendation is made, the President has 15 days to act.

The “Byrd Amendment”

In 1992, Congress amended the Exon-Florio statute through section 837(a) of the National Defense Authorization Act for Fiscal Year 1993. Known as the “Byrd Amendment” after the amendment’s sponsor, the provision requires CFIUS to investigate proposed mergers, acquisitions, or takeovers in cases where:

- (1) the acquirer is controlled by or acting on behalf of a foreign government;
- and**
- (2) the acquisition results in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States.⁹

This amendment came under particularly intense scrutiny by the 109th Congress as a result of the DP World transaction. Many Members of Congress and others believed that this amendment required CFIUS to undertake a full 45-day investigation of the transaction, because DP World was “controlled by or acting on behalf of a foreign government.” The DP World acquisition, however, exposed a sharp rift between what some Members apparently believed the amendment directed CFIUS to do and how the members of CFIUS were interpreting the amendment. In particular, some Members of Congress apparently interpreted the amendment to

⁶ *Congressional Record*, Daily Edition, vol. 134, April 20, 1988. p. H2118.

⁷ P.L. 100-418, title V, Subtitle A, Part II, or 50 U.S.C. app 2170.

⁸ Executive Order 12661 of December 27, 1988, 54 F.R. 779.

⁹ P.L. 102-484, October 23, 1992.

require CFIUS to conduct a mandatory 45-day investigation without exception if the foreign firm involved in a transaction is owned or controlled by a foreign government.

Representatives of CFIUS, however, argued that there were two factors that controlled their decision not to conduct a 45-day investigation of the transaction. First, they argued that the requirements of the Exon-Florio provision itself precluded them from engaging in a 45-day investigation, because their initial review did not find “credible evidence” that the transaction would impair national security, a basic threshold for CFIUS to meet in order to invoke the Exon-Florio provision. Secondly, representatives indicated that they interpret the amendment to mean that a 45-day investigation is discretionary and not mandatory, again because of the requirement that a transaction must be found to cause an impairment to national security before the Exon-Florio provision can be invoked.

As a result of the attention by both the public and Congress, DP World officials announced that they would sell off the U.S. port operations to an American owner.¹⁰ On December 11, 2006, DP World officials announced that a unit of AIG Global Investment Group, a New York-based asset management company with \$683 billion in assets, but no experience in port operations, would acquire the U.S. port operations for an undisclosed amount.¹¹

In the case of the DP World acquisition, CFIUS representatives argued that they had concluded as a result of an extensive review of the proposed acquisition both prior to the case being formally filed with CFIUS and as a result of a 30-day review that the DP World case did not warrant a full 45-day investigation. During these two reviews, one informal and one formal, CFIUS members believed that all concerns that had been expressed by members of CFIUS had been adequately resolved so that by the time of the review no member of CFIUS had any unresolved concerns about the impact of the transaction on national security. They conceded that the case met the first criterion under the Byrd amendment, because DP World was controlled by a foreign government, but that it did not meet the second part of the requirement, because CFIUS had concluded during the 30-day review that the transaction “could not affect the national security.”¹²

Through the Exon-Florio provision, Congress directed that the President or his designee *may* consider a short list of factors in deciding whether to block a foreign acquisition, merger, or takeover. Again, the President has broad discretion under the current statute to decide the basis on which he determines whether a transaction might impair the national security. This list includes the following factors:

¹⁰ Weisman, Jonathan, and Bradley Graham, “Dubai Firm to Sell U.S. Port Operations,” *The Washington Post*, March 10, 2006. p. A1.

¹¹ King, Neil Jr., and Greg Hitt, Dubai Ports World Sells U.S. Assets — AIG Buys Operations that Ignited Controversy As Democrats Plan Changes. *The Wall Street Journal*, December 12, 2006. P. A1.

¹² Briefing on the Dubai Ports World Deal before the Senate Armed Services Committee, February 23, 2006.

- (1) domestic production needed for projected national defense requirements;
- (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services;
- (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security;
- (4) the potential effects of the transactions on the sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; and
- (5) the potential effects of the transaction on U.S. technological leadership in areas affecting U.S. national security.

Part of Congress's motivation in adopting the Exon-Florio provision apparently arose from concerns that foreign takeovers of U.S. firms could not be stopped unless the President declared a national emergency or regulators invoked federal antitrust, environmental, or securities laws. Through the Exon-Florio provision, Congress attempted to strengthen the President's hand in conducting foreign investment policy, while providing a cursory role for itself as a means of emphasizing that, as much as possible, the commercial nature of investment transactions should be free from political considerations. Congress also attempted to balance public concerns about the economic impact of certain types of foreign investment with the nation's long-standing international commitment to maintain an open and receptive environment for foreign investment

Furthermore, Congress did not intend to have the Exon-Florio provision alter the generally open foreign investment climate of the country or to have it inhibit foreign direct investments in industries that could not be considered to be of national security interest. The basic approach of the provision, therefore, was to presume that foreign investment generally has a 'positive effect on the economy and that it should be encouraged and restricted only in those cases in which a specific transaction had met a burden of proof that the proposed investor "might take action that threatens to impair the national security."

At the time the Exon-Florio provision was adopted, some analysts believed the provision could potentially widen the scope of industries that fell under the national security rubric. CFIUS, however, is not free to establish an independent approach to reviewing foreign investment transactions, but operates under the authority of the President and reflects his attitudes and policies. As a result, the discretion CFIUS uses to review and to investigate foreign investment cases reflects policy guidance from the President. Foreign investors are also constrained by legislation that bars foreign direct investment in such industries as maritime, aircraft, banking, resources and power.¹³ Generally, these sectors were closed to foreign investors, primarily for

¹³ CRS Report RL33103, *Foreign Investment in the United States: Major Federal Restrictions*, by Michael V. Seitzinger.

national defense purposes, prior to passage of the Exon-Florio provision to prevent these areas from being subject to foreign control.

Exon-Florio Provision After September 11, 2001

Arguably, the events of September 11, 2001, have reshaped Congressional attitudes toward the Exon-Florio provision and the manner in which it should be used. During discussion about the Exon-Florio provision prior to its passage in 1988, the Reagan Administration opposed a definition of national security that included “essential commerce and national security,” because the administration argued that the definition was too broad. Ultimately, the Reagan Administration succeeded in getting the term “essential commerce” dropped from the provision. After the September 11th terrorist attacks, however, Congress passed and President Bush signed the USA PATRIOT Act of 2001 (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism).¹⁴ In this act, Congress provided for special support for “critical industries,” which it defined as:

systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.¹⁵

This broad definition is enhanced to some degree by other provisions of the act, which specifically identify certain sectors of the economy, therefore, as likely candidates for consideration as critical infrastructure, including telecommunications, energy, financial services, water, transportation sectors,¹⁶ and the “cyber and physical infrastructure services critical to maintaining the national defense, continuity of government, economic prosperity, and quality of life in the United States.”¹⁷ The following year, Congress adopted the language in the Patriot Act on critical infrastructure into The Homeland Security Act of 2002.¹⁸

By adopting the terms “critical infrastructure” and “homeland security,” following the events of September 11, 2001, Congress demonstrated that the attacks fundamentally altered the way many Members of Congress and many in the public view the concept of national security. As a result, many in Congress and in the public have come to believe that economic activities are a separately identifiable component of national security. In addition, many in Congress and elsewhere apparently perceive greater risks to the economy arising from foreign investments in which the foreign investor is owned or controlled by foreign governments as a result of the terrorist attacks. The Dubai Ports World case, in particular, demonstrated that there was a difference between the post-September 11 expectations held by many in Congress about the role of foreign investment in the economy and of economic

¹⁴ P.L. 107-56, title X, Sec. 1014, October 26, 2001; 42 U.S.C. Sec. 5195c(e).

¹⁵ *Ibid.*

¹⁶ 42 U.S.C. Sec. 5195c(b)(2).

¹⁷ 42 U.S.C. Sec. 5195c(b)(3).

¹⁸ 6 U.S.C. Sec. 101(4).

infrastructure issues as a component of national security and the operations of CFIUS. For some Members of Congress, CFIUS seemed to be out of touch with the post-September 11, 2001 view of national security, because it remains founded in the late 1980s orientation of the Exon-Florio provision, which views national security primarily in terms of national defense and downplays or even excludes a broader notion of economic national security.

Overview of H.R. 5337 and S. 3549

H.R. 5337¹⁹ and S. 3549²⁰ share a number of common objectives and some common approaches. Both measures attempted to address congressional concerns by establishing CFIUS as a matter of statute, thereby giving Congress a direct role in determining the make-up and operations of the Committee. Under the House bill, the Secretary of Homeland Security and the Secretary of Defense would have served as Vice Chairmen, while the Senate bill would have had the Secretary of Defense serve in that capacity. The House bill would have retained the basic structure of the Committee as it presently exists, while the Senate bill would have included the Director of National Intelligence as a member of CFIUS and excluded, except on a case-by-case basis, the current members of CFIUS that are from the White House — the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisors, the United States Trade Representative, the Director of the National Economic Council, the Director of the Office of Science and Technology, and the President's Assistant for National Security Affairs.

Under both measures, the Committee would have operated under the same time frame that currently exists with 30 days allotted for a review, 45 days for an investigation and 15 days for the President to make his determination. In both bills, the President would have retained his authority as the only officer with the authority to suspend or prohibit certain types of foreign investments. The Senate bill would have allowed CFIUS to extend a review by 30 days under certain circumstances. Both measures would have placed additional requirements on firms that resubmitted a filing after previously withdrawing a filing before a full review had been completed.

¹⁹ H.R. 5337 was introduced by Representative Blunt on May 10, 2006. Hearings were held on March 1, 2006, April 27, 2006, and on May 17, 2006, by the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the House Financial Services Committee. The measure was approved unanimously with an amendment by the House Financial Services Committee on June 14, 2006. See also H.Rept. 109-523, and the *Congressional Record*, July 26, 2006, p. H5863-H5873.

²⁰ S. 3549 was introduced by Senator Shelby on June 21, 2006. Hearings were held on October 6, 2005, by the Senate Committee on Banking, housing, and Urban Affairs on CFIUS, on October 20, 2005, on the Exon-Florio Amendment, and on March 2, 2006, on the Dubai Ports World acquisition of P&O. The Committee met on March 30, 2006, and adopted the measure with amendment. See also S.Rept. 109-264, and the *Congressional Record*, July 26, 2006, p. S8317-S8321.

In the House bill, no review or investigation would have been considered to be complete until it had been signed by the Secretary of the Treasury and the Secretary of Homeland Security to insure that principal members of CFIUS were aware of all reviews and investigations completed by CFIUS. The House bill would have required that CFIUS review all foreign investment transactions to determine whether a transaction threatens to impair the national security.

Both measures would have placed increased requirements on CFIUS to review investment transactions in which the foreign person is owned or controlled by a foreign government. It is unclear, however, to what extent the House and Senate bills would have altered the current process. While both bills would have explicitly required CFIUS to review all investment transactions in which the foreign person is owned or controlled by a foreign government, neither measure amended or altered the current statute in the area that has been the source of recent differences between CFIUS and Congress. In particular, the current statute states that the President, and through him CFIUS, can use the Exon-Florio process “only if” he finds that there is “credible evidence” that a foreign investment will impair national security. As a result, CFIUS has determined, as was the case in the Dubai Ports transaction, that if the Committee did not have credible evidence that an investment will impair the national security that it is not required to undertake a full 45-day investigation. It is possible that CFIUS could continue to operate in this manner, regardless of the passage of either of the measures.

In addition, if CFIUS did act to investigate all foreign investment transactions in which the foreign person is owned or controlled by a foreign government, foreign investors likely would regard it as a sharply changed attitude by the United States toward foreign investment. As previously stated, the current system presumes that foreign investment transactions are accepted, and it places a burden on the members of CFIUS to prove that a particular transaction is a threat to national security. The House and Senate bills, however, might have been interpreted to presume that investment transactions in which the foreign person is owned or controlled by a foreign government are a threat to the nation’s security simply because of the relationship to the foreign government and, therefore, might require the firms to prove that they are not a threat. Although the number of investment transactions a year in which the foreign investor is associated with a foreign government is small compared with the total number of foreign investment transactions, foreign investors and foreign governments likely would have viewed this as a significant change in the traditional U.S. approach to foreign investment.

Both bills attempted to increase the role of congressional oversight by requiring greater reporting by CFIUS on its actions either during or after it completed reviews and investigations and by increasing reporting requirements on CFIUS. The House bill, for instance, would have required the Secretary of the Treasury and the Secretary of Homeland Security to sign and approve any review or investigation. In those cases in which the foreign person involved in an investment transaction is owned or controlled by a foreign government, a majority of the members of CFIUS would have been required to approve of the transaction and the President and the chair and vice chairs of CFIUS would have been required to sign off on investments in which at least one member of CFIUS did not agree with the decision of the majority to approve the transaction.

The House and Senate measures would have required CFIUS to provide Congress with a greater amount of detailed information about its operations, albeit at different stages in the process. The Senate bill would have required CFIUS to notify specified Members of Congress at the conclusion of a review of any investment transaction in which there is any ownership or control by a foreign government. Both bills would have required CFIUS to notify specified Members at the conclusion of any investment investigation. The Senate bill would also have required CFIUS to notify the governors of states in which the investment transaction involved any critical infrastructure. The House bill would have required CFIUS to report semi-annually to Congress, while the Senate version would have required CFIUS to provide detailed reports annually. In both cases, CFIUS would have been required to provide more information than the current statute requires.

The House and Senate measures also would have provided for greater reporting on and increased authority for CFIUS to negotiate provisions with the foreign firms involved in investment transactions to mitigate the impact of the transaction. Under current statutes, CFIUS has no authority to negotiate such agreements with firms and it is not clear that it has any authority to enforce such agreements. The House bill, in particular, would have provided for a process to track the agreements and to report the progress of such agreements and any changes to the agreements to the members of CFIUS and to the President.

Both bills also would have amended the current statute regarding the meaning of national security and would have placed additional requirements on CFIUS regarding national security reviews. The Senate bill also would have required CFIUS to review any transaction in which the investment resulted in a foreign person gaining control of any critical infrastructure in the United States. The House bill would have explicitly required the Director of National Intelligence to conduct reviews of any investment that posed a threat to the national security. The Senate bill also would have required the Director of National Intelligence to have the intelligence community collect and analyze information related to any proposed or pending investment transactions and to insure that the intelligence community remained engaged throughout the review and investigation of any investment transaction. In addition, the Senate bill would have required CFIUS to develop and implement a system of assessing individual countries as part of their review of potential investors in U.S. assets according to three criteria: a country's adherence to nonproliferation control regimes; a country's record on cooperation with the United States in counterterrorism efforts; and a country's potential for transshipment or diversion of technologies with military applications. Historically, the United States has never applied a similar policy test to potential foreign investors.

Both bills also would have provided additional factors the President and CFIUS could have used in assessing foreign investments. The House bill would have made such factors a mandatory part of the review process, while the Senate bill would have continued with the current statute, which makes the use of the factors a matter of the President's discretion. The House bill would have added implications for the nation's critical infrastructure as a matter for reviewing or investigating an investment transaction. The Senate would also have added critical infrastructure as a matter for review as well as investments that could affect major energy assets,

critical technologies, long-term impact on U.S. energy supplies, and the assessment of countries according to the three criteria indicated in the previous paragraph.

Side-by-Side Comparison of H.R. 5337 and S. 3549

The following section provides a more detailed comparison of the two bills and the current provisions.

CFIUS Investigations

According to the Exon-Florio provision and subsequent regulations issued by the Treasury Department, CFIUS has 30 days after it receives the initial formal notification by the parties to a merger, acquisition, or a takeover, to decide whether to investigate a case as a result of its determination that the investment “threatens to impair the national security of the United States.” If during this 30-day period all the members of CFIUS conclude that the investment does not threaten to impair the national security or if the concerns of any member are resolved, the review is terminated. If, however, at least one member of the Committee determines that the investment does threaten to impair the national security and if these concerns are not resolved, CFIUS can proceed to a 45-day investigation. At the conclusion of the investigation or the 45-day review period, whichever comes first, the Committee can decide to offer no recommendation or it can recommend that the President suspend or prohibit the investment. The President is under no obligation to follow the recommendation of the Committee to suspend or prohibit an investment.

According to a subsequent amendment, the Byrd Amendment, CFIUS is required to conduct a 45-day investigation of a transaction in any instance in which the foreign entity is controlled by or acting on behalf of a foreign government which could result in the foreign entity gaining control of the U.S. entity and that could affect the national security of the United States. Such an investigation is required to begin no later than 30 days after CFIUS receives written notice of the proposed or pending merger, acquisition, or takeover and be completed in no more than 45 days.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
Subsections (a) and (b) of the Exon-Florio provision (50 U.S.C. Sec. 2170) providing authority for reviews and investigations and for mandatory investigations in those cases where the foreign entity is owned or controlled by foreign governments, known as the “Byrd Amendment,” would be removed and replaced by the following section.	Subsections (a) and (b) would not be removed, but would be amended by the following sections.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
<p>National security reviews.</p> <p>The President, acting through CFIUS, would be required to review any transaction to determine whether the transaction threatens to impair the national security of the United States and whether that threat could be mitigated.</p> <p>If CFIUS determined that the investment transaction is a foreign government-controlled transaction, CFIUS would be required to conduct an investigation of the transaction.</p>	<p>Mandatory notification related to transactions affecting national security.</p> <p>The chairperson and vice chairperson of CFIUS, within 90 days of the enactment of this measure, would be required to issue rules, including the imposition of appropriate penalties for failure to comply, that require each person controlled by or acting on behalf of a foreign government to notify the chairperson of CFIUS in writing of any proposed transaction involving critical infrastructure relating to United States national security.</p> <p>Upon receiving a notification of a proposed or pending transaction under this section, the chairperson of CFIUS would be required to assign the appropriate member of CFIUS to lead the review and investigation.</p>
<p>No comparable section.</p>	<p>Reviews involving foreign persons and governments.</p> <p>CFIUS would be required to review any transaction proposed or pending by, with, or on behalf of a foreign person or foreign government which could result in foreign control of a person engaged in interstate commerce in the United States.</p> <p>The purpose of the review would be to determine the effect on national security of the transaction, and to determine whether an investigation of the transaction is required under subsection (b) of the Exon-Florio provision.</p>
<p>Notice of investment.</p> <p>Any party to any investment transaction may initiate a review of the transaction under this paragraph by submitting a written notice of the transaction to the Chairperson of CFIUS.</p> <p>No transaction for which a notice was submitted may be withdrawn from review unless:</p> <ol style="list-style-type: none"> 1) a written request for such withdrawal is 	<p>No comparable section.</p>

H.R. 5337
**Reform of National Security Reviews
of Foreign Direct Investments Act**

S. 3549
**Foreign Investment and National
Security Act of 2006**

submitted by any party to the transaction;
and

2) the request is approved in writing by the Chairperson, in consultation with the Vice Chairperson, of the Committee.

Timing of a review.

A review of a proposed or pending investment transaction would be required to be completed not later than 30 days after the date CFIUS received the written notification.

No comparable provision.

Timing of a review.

Same.

Extensions.

Upon written request by the Secretary, Deputy Secretary, or Under Secretary, or the equivalent thereof, of one or more of the agencies that make up CFIUS for additional time to review a case, the 30-day period shall be extended by not longer than an additional 30 days, if the Secretary, Deputy Secretary, or Under Secretary, or the equivalent thereof, concludes that there is credible evidence to believe that if permitted to proceed with the transaction, the foreign acquiring entity may take action that threatens to impair the national security.

Initiation of a review.

The President, the Committee, or any member of the Committee may move to initiate a review of an investment transaction under the following conditions:

- 1) any investment transaction;
- 2) of any transaction that had previously been reviewed or investigated if any party to the transaction submitted false or misleading material information to CFIUS in connection with the review or investigation or omitted material information, including material documents, from information submitted to the Committee; or
- 3) any transaction that had previously been reviewed or investigated if any party to the

H.R. 5337
**Reform of National Security Reviews
of Foreign Direct Investments Act**

S. 3549
**Foreign Investment and National
Security Act of 2006**

transaction or the entity resulting from consummation of the transaction intentionally materially breached a mitigation agreement or condition, and 1) the breach is certified by the lead department or agency monitoring and enforcing such agreement or condition as an intentional material breach; and 2) the department or agency certifies that there is no other remedy or enforcement tool available to address such breach.

National security investigations.

The President, acting through CFIUS, would be required to conduct an investigation of the effects of a transaction on the national security of the United States and take any necessary actions in connection with the transaction to protect the national security of the United States in those cases in which a review results in a determination that:

- 1) the transaction threatens to impair the national security of the United States and that threat has not been mitigated during or prior to the review; or
- 2) the transaction is a foreign government-controlled transaction; or
- 3) the Director of National Intelligence identifies particularly complex national security or intelligence issues that could threaten to impair the national security of the United States and were not resolved during the initial review period.

Timing of an investigation.

An investigation would be required to be completed within 45 days.

Resubmittal of notices.

Parties to a transactions would not be

Investigations.

CFIUS would be required to undertake an investigation to determine the effects on national security of any transaction which would:

- 1) result in control of any person engaged in interstate commerce in the United States by a foreign government, or a person acting by, with, or on behalf of a foreign government; or
- 2) result in control of any critical infrastructure of or within the United States by, with, or on behalf of any foreign person, if CFIUS determines that any possible impairment to national security has not been mitigated by assurances provided or renewed with the approval of CFIUS.

If the review by CFIUS produces sufficient information to indicate the possibility of an impairment to national security, after consideration of the factors listed and the issues that could result in an impairment to national security are not resolved through negotiation of assurances between one or more members of CFIUS and the entities involved in the transaction.

Timing of an investigation.

Same.

Resubmittal of filings.

If an investigation of a transaction is

H.R. 5337
**Reform of National Security Reviews
of Foreign Direct Investments Act**

S. 3549
**Foreign Investment and National
Security Act of 2006**

prohibited from:

1) submitting additional information concerning the transaction, including any proposed restructuring of the transaction or any modifications to any agreements in connection with the transaction, while any review or investigation of the transaction is ongoing; or

2) requesting a review or investigation of the transaction after any previous review or investigation of the same or a similar transaction has become final if information material to the prior review or investigation and not previously submitted to the Committee becomes known or if any material change in circumstances to the covered transaction has occurred since the review or investigation.

CFIUS would grant requests for resubmittal by a consensus of the members of CFIUS.

Extensions of investigations.

The period for any investigation may be extended by the President or by a roll call vote of at least 2/3 of the members of CFIUS involved in the investigation by no more than 45 days in order to collect and fully evaluate information relating to: 1) the transaction or the parties to the transaction; and 2) any effect of the transaction that could threaten to impair the national security of the United States.

Required approvals.

A review or investigation would not be treated as final or complete until the findings and the report resulting from the review or investigation are approved and signed by both the Secretary of the Treasury and the Secretary of Homeland Security. The authority of the Secretary may not be delegated to any person other than the Deputy Secretary of the Treasury or the Deputy Secretary of Homeland Security, respectively.

interrupted due to the filing being withdrawn by the applicant, then any resubmission would require a 45-day investigation. The investigation would be required to include a review of the rationale for the withdrawal and resubmission of the proposed transaction to CFIUS.

No comparable provision.

No comparable provision.

H.R. 5337
**Reform of National Security Reviews
of Foreign Direct Investments Act**

S. 3549
**Foreign Investment and National
Security Act of 2006**

In the case of an investigation of any foreign government-controlled transaction, an investigation would not be treated as final or complete until the findings and report resulting from the investigation:

- 1) are approved by a majority of the members of the Committee in a roll call vote; and
- 2) in the case of any roll call vote in which there is at least 1 vote by a Committee member against approving a foreign government-controlled transaction, are signed by the President, in addition to the Chairperson and the Vice Chairperson of CFIUS.

No comparable provision.

Required completion of investigations.

An investigation of a transaction would be required to be completed, even if the notification or filing of the transaction is withdrawn or rescinded. CFIUS would be required to monitor a withdrawn or rescinded transaction, except that a completed investigation or continued monitoring would not be required for transactions that were terminated by agreement of the parties to the transaction.

Analysis by the Director of National Intelligence.

The Director of National Intelligence would be required expeditiously to carry out a thorough analysis of any threat to the national security of the United States of any transaction, including an inquiry for information to the Director of the Office of Foreign Assets Control within the Department of the Treasury and the Director of the Financial Crimes Enforcement Network.

This analysis would be required to be completed in no less than 30 days and be completed no less than 7 days before the end of the initial review period.

Intelligence reviews.

The Director of National Intelligence would be required:

- 1) to direct the intelligence community, to collect and analyze information related to any proposed or pending transaction, and to prepare a report of its findings, which the Director shall make available to members of CFIUS not later than 15 days after the date of the commencement by CFIUS of a 30-day review of any transaction, and before the commencement of any investigation; and
- 2) to ensure that the intelligence community remains engaged in the

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
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collection, analysis, and dissemination to CFIUS of any additional relevant information that may become available during the course of any investigation of a transaction.

Independent role of the Director of National Intelligence.

The Director of National Intelligence would not be a member of CFIUS and would serve no policy role with the Committee other than to provide analysis.

No comparable provision.

No comparable provision.

Assessments of foreign countries.

Within 120 days of enactment, the chairperson and vice chairperson of CFIUS, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of National Intelligence, would be required to develop and implement a system for assessing individual countries, including:

- 1) an assessment of each country's adherence to nonproliferation control regimes, including treaties and multilateral supply guidelines, which shall draw on, but not be limited to, the annual report on Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments required by section 403 of the Arms Control and Disarmament Act;
- 2) an assessment of the relationship of each country with the United States, specifically on its record on cooperating in counterterrorism efforts, which shall draw on, but not be limited to, the report of the President to Congress under section 7120 of the Intelligence Reform and Terrorism Prevention Act of 2004; and
- 3) an assessment of the potential for transshipment or diversion of technologies with military applications, including an analysis of national export control laws and

H.R. 5337	S. 3549
Reform of National Security Reviews of Foreign Direct Investments Act	Foreign Investment and National Security Act of 2006

regulations.

Composition of CFIUS

The Committee on Foreign Investment in the United States (CFIUS) was created by Executive Order of President Ford in 1975²¹ to serve the President in overseeing the national security implications of foreign investment in the economy. President Ford's 1975 Executive Order established the basic structure of CFIUS, and directed that the "representative"²² of the Secretary of the Treasury be the chairman of the Committee. The Executive Order also stipulated that the Committee would have "the primary continuing responsibility within the Executive Branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of United States policy on such investment."²³ Presently, the Committee consists of twelve members, including the Secretaries of State, the Treasury, Defense, Homeland Security, and Commerce; the United States Trade Representative; the Chairman of the Council of Economic Advisers; the Attorney General; the Director of the Office of Management and Budget; the Director of the Office of Science and Technology Policy; the Assistant to the President for National Security Affairs; and the Assistant to the President for Economic Policy.²⁴

H.R. 5337	S. 3549
Reform of National Security Reviews of Foreign Direct Investments Act	Foreign Investment and National Security Act of 2006

Establishes CFIUS as a matter of Same.
statute.

²¹ Executive Order 11858 (b), May 7, 1975, 40 F.R. 20263.

²² The term "representative" was dropped by Executive Order 12661, December 27, 1988, 54 F.R. 780.

²³ Executive Order 11858 (b), May 7, 1975, 40 F.R. 20263.

²⁴ Executive Order 11858 of May 7, 1975, 40 F.R. 20263 established the Committee with six members: the Secretaries of State, the Treasury, Defense, Commerce, and the Assistant to the President for Economic Affairs, and the Executive Director of the Council on International Economic Policy. Executive Order 12188, January 2, 1980, 45 F.R. 969, added the United States Trade Representative and substituted the Chairman of the Council of Economic Advisers for the Executive Director of the Council on International Economic Policy. Executive Order 12661, December 27, 1988, 54 F.R. 779, added the Attorney General and the Director of the Office of Management and Budget. Executive Order 12860, September 3, 1993, 58 F.R. 47201, added the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs, and the Assistant to the President for Economic Policy. Executive Order 13286, Section 57, February 28, 2003 added the Secretary of Homeland Security.

H.R. 5337	S. 3549
Reform of National Security Reviews of Foreign Direct Investments Act	Foreign Investment and National Security Act of 2006
Chairman. Secretary of the Treasury.	Chairman. Same.
Vice-Chairman. Secretary of Homeland Security and the Secretary of Commerce.	Vice-Chairman. Secretary of Defense.
Membership. The Secretary of the Treasury. The Secretary of Homeland Security. The Secretary of Commerce. The Secretary of Defense. The Secretary of State. The Attorney General. The Director of the Office of Management and Budget. The Chairman of the Council of Economic Advisors. The United States Trade Representative. The Director of the National Economic Council. The Director of the Office of Science and Technology Policy. The President's Assistant for National Security Affairs. Any other designee of the President from the Executive Office of the President. Chairperson of CFIUS can involve the heads of other Federal departments, agencies, and independent establishments in any review or investigation.	Membership. Same. Same. Same. Same. Same. Same. Same. The Director of National Intelligence. The heads of other executive departments or agencies as the President determines appropriate, on a case-by-case basis.
Meetings. The Committee would meet upon the direction of the President or on the call of the Chairperson of the Committee	No comparable provision.
Collection of Evidence. The Committee would be able to take testimony, receive evidence, administer oaths; and require the testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Chairperson of the Committee requests.	No comparable provision.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
Authorization of Appropriations.	No comparable provision.
\$10,000,000 appropriated to the Secretary of the Treasury for each of fiscal years 2007, 2008, 2009, and 2010, expressly and solely for the operations of the Committee.	

Presidential Actions

The Exon-Florio provision grants the President the authority to “take such action for such time as the President considers appropriate to suspend or prohibit” any acquisition, merger, or takeover by a foreign entity of “persons engaged in interstate commerce in the United States” that threaten to impair the national security. The President is required to announce his decision within 15 days after CFIUS completes its investigation of a proposed transaction. The President was also granted the authority to direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this decision by the President.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
Unchanged.	This section is different from the current provision because it indicates that the President can exercise his authority in those cases in which a transaction which would result in control of any critical infrastructure or person engaged in interstate commerce...

Findings

The Exon-Florio provision grants the President the authority to block proposed or pending foreign acquisitions of “persons engaged in interstate commerce in the United States” that threaten to impair the national security. Congress directed, however, that before the President can invoke this authority he must believe that the case meets two tests, or findings. First, he must believe that other U.S. laws are inadequate or inappropriate to protect the national security. Secondly, he must have “credible evidence” that the foreign investment will impair the national security.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
Unchanged.	Same, except for the addition of the following: The actions of the President and the findings of the President would not be subject to judicial review.

Factors Used in Findings

As it is currently written, the Exon-Florio provision includes a list of five factors the President *may* consider in deciding to block a foreign acquisition. These factors are also considered by the individual members of CFIUS as part of their own review process to determine if a particular transaction threatens to impair the national security. This list includes the following elements:

- (1) domestic production needed for projected national defense requirements;
- (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services;
- (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security;
- (4) the potential effects of the transactions on the sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; and
- (5) the potential effects of the transaction on U.S. technological leadership in areas affecting U.S. national security.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
CFIUS would be required (shall instead of may) to use the factors in evaluating foreign investment transactions	No comparable provision.
The five factors listed above and	Same.

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|--|---|
| (6) whether the covered transaction has a security-related impact on critical infrastructure in the United States; | (6) potential effects on United States critical infrastructure, including major energy assets; |
| (7) whether the transaction is a foreign government-controlled transaction; and | (7) potential effects on United States critical technologies; |
| (8) such other factors as the President or the President's designee may determine to be appropriate, generally or in connection with a specific review or investigation. | (8) the long term projection of United States requirements for sources of energy and other critical resources and materials; and |
| | (9) the ranking developed under subsection (c)(7) of the country in which the foreign persons acquiring United States entities are based. |

Confidentiality

The Exon-Florio provision also codified confidentiality requirements that are similar to those that appeared in Executive Order 11858 by stating that any information or documentary material filed under the provision may not be made public “except as may be relevant to any administrative or judicial action or proceeding.”²⁵ The provision does state, however, that this confidentiality provision “shall not be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.” The Exon-Florio provision requires the President to provide a written report to the Secretary of the Senate and the Clerk of the House detailing his decision and his actions relevant to any transaction that was subject to a 45-day investigation.²⁶ As presently written, there is no requirement for CFIUS or the President to notify or otherwise inform Congress of cases it reviews or of the outcome of any investigation.

²⁵ 50 U.S.C. Appendix Sec. 2170(c)

²⁶ 50 U.S.C. Appendix Sec. 2170(g).

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
<p>Reports that are required to be released to Congress that contain proprietary information which can be associated with a particular party to an investment transaction can be furnished to committee of the Congress only when the committee provides assurances of confidentiality, unless the party consents in writing to disclosing the information.</p>	<p>Any information or documentary material filed with CFIUS would be exempt from disclosure under section 552 of title 5, United States Code, and no information or documentary material could be made public, except as it is relevant to an administrative or judicial action or proceeding.</p> <p>CFIUS would be required to notify the Governor of any State regarding a transaction involving critical infrastructure in that State for the purpose of discussing any security concerns that might arise or might arise from that transaction. Information or documentary material made available to a Governor may not be made public, including under any law of a State pertaining to freedom of information or otherwise.</p> <p>Nothing in this subsection would prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of Congress.</p>

Mitigation and Tracking

Since the implementation of the Exon-Florio provision, CFIUS has developed several practices that likely were not envisioned when the statute was drafted. For instance, CFIUS negotiates conditions with firms at times either to mitigate or to remove matters that raise national security concerns among the members of CFIUS. Such agreements often are informal arrangements. These arrangements appear to have no basis in statute and have not been tested in court. These arrangements have been negotiated during the formal 30-day review period, or even during an informal process prior to the formal filing of a notice of an investment transaction.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
<p>The Committee may negotiate, enter into or impose, and enforce any agreement or condition with any party to an investment transaction in order to mitigate any threat to the national security of the United</p>	<p>Any assurances given to one or more agencies of the United States in connection with the review or investigation of, or any Presidential decision concerning, any transaction would be deemed to be a</p>

States.

Any agreement entered into or condition imposed would be required to be based on a risk-based analysis of the threat to national security of the transaction.

If any written notice of an investment transaction is withdrawn before the review or investigation is completed, the Committee could establish:

- 1) interim protections to address specific concerns that have been raised in connection with any such review or investigation pending any resubmission;
- 2) specific time frames for resubmitting any written notice; and
- 3) a process for tracking any actions that may be taken by any party to the transaction, in connection with the transaction, before the notice is resubmitted.

The Committee may designate an appropriate Federal department or agency as the lead agency to negotiate, modify, monitor, and enforce any agreement related to an investment transaction based on the expertise with and knowledge of the issues related to the transaction.

The Federal department or agency designated by the Committee as a lead agency would be required to:

- 1) provide periodic reports to the chairperson and vice chairperson of the Committee on the implementation of any agreement or condition; and
- 2) require, as appropriate, any party to the transaction to report to the head of the department or agency on the implementation or any material change in circumstances.

The Federal department or agency designated by the Committee as a lead agency shall:

- 1) provide periodic reports to the chairperson and vice chairperson of the Committee on any modification to any agreement or condition imposed with respect to the transaction; and
- 2) ensure that any significant modification to any agreement or condition is reported

continuing covenant of the persons on whose behalf such review is sought (and of all persons controlling such person), the observance of which shall be a condition of the determination of CFIUS, the President, or both, on whether to take any action with respect to the transaction.

Any assurances would be embodied in an agreement executed by the foreign person or foreign government on whose behalf a review of a transaction is sought under this section and the chairperson or vice chairperson of CFIUS, on behalf of the United States.

Compliance with any assurances will be monitored, and may be investigated, in the same manner as a violation of a civil statute, by the agency designated by the chairperson of CFIUS, in consultation with the vice chairperson and the Attorney General of the United States.

No comparable provision.

No comparable provision.

to the Director of National Intelligence and to any other Federal department or agency that may have a material interest in the modification.

Each notice required to be submitted to the President or the President's designee and each report required by this act with respect to the implementation of any mitigation agreement or condition or any material change in circumstances would be required to be accompanied by a written statement by the chief executive officer or the designee of the person required to submit such notice or report certifying that, to the best of the person's knowledge and belief:

No comparable provision.

- 1) that the notice or report submitted fully complies with the requirements of the appropriate section or such regulation, agreement, or condition; and
- 2) that the information is accurate and complete.

Congressional Oversight

In hearings that were held after the Dubai Ports World transaction, various Members expressed concern that they were provided so little information under the current statute that their ability to fulfill their oversight responsibilities was being hampered. In addition, some Members apparently believed that the current requirements do not provide Members with enough information to address public concerns that occasionally arise concerning particular investment transactions, such as the Dubai Ports World transaction. Currently, the President is required to report to Congress on his determination to take action on a proposed investment transaction after CFIUS has completed a 30-day review and a 45-day investigation of the transaction. The President's report is required to contain a detailed explanation of the findings and of the factors the President used to make his determination.

The President is also required to provide an assessment of the risk of diversion of defense critical technology posed by an investment transaction if such an assessment is performed and that the assessment be provided to any other individual responsible for reviewing or investigating investment transactions under the Exon-Florio provision. In addition, the President is required to provide Congress with a quadrennial report which evaluates two issues: 1) whether there is credible evidence of a coordinated strategy by one or more countries or companies to acquire U.S. companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and 2) whether there are industrial espionage activities directed or directly assisted by foreign governments against private U.S. companies aimed at obtaining commercial secrets related to critical technologies.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
<p>No comparable provision.</p>	<p>Notice of investment reviews.</p> <p>Not later than 10 days after the receipt of a proposed or pending transaction CFIUS would be required to transmit written notice to specified members of Congress including the identities of all parties involved and any foreign government ownership or control of any party.</p> <p>Upon completion of a review CFIUS and the head of the lead agency would transmit a certified notice to the members of Congress.</p>
<p>No comparable provision.</p>	<p>Notice of investment investigations.</p> <p>CFIUS would be required to notify specified members of Congress when it commences an investigation of investment transactions.</p>
<p>Report on investigations.</p> <p>Not later than 5 days after completing an investigation, or 15 days if the President intends to take any action, CFIUS would be required to submit a written report on the findings or actions of an investigation, the determination of whether or not to take action to block or suspend the transaction, an explanation of the findings, and the factors considered with respect to the transaction.</p>	<p>Report on investigations.</p> <p>As soon as practicable after completing an investigation CFIUS and the head of the lead agency would be required to transmit to specified members of Congress a certified written report on the results of the investigation, unless the matter under investigation has been sent to the President for decision.</p> <p>Each certified notice and report would be required to include:</p> <ol style="list-style-type: none"> 1) whether or not an investigation had been completed; 2) a description of the actions taken by CFIUS with respect to the transaction; and 3) identification of the factors considered. <p>Each certified notice would be required to be signed by the chairperson and vice chairperson of CFIUS and the head of the lead agency, and contain an attestation that the transaction does not impair the national security.</p>
<p>The report would be sent to:</p>	<p>The notices and reports would be sent to:</p>

<p style="text-align: center;">H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act</p>	<p style="text-align: center;">S. 3549 Foreign Investment and National Security Act of 2006</p>
<p>1) the Majority Leader and the Minority Leader of the Senate;</p> <p>2) the Speaker and the Minority Leader of the House of Representatives; and</p> <p>3) the chairman and ranking member of each committee of the House of Representatives and the Senate with jurisdiction over any aspect of the transaction and its possible effects on national security.</p>	<p>1) the Majority Leader and the Minority Leader of the Senate;</p> <p>2) the chair and ranking member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of any committee of the Senate having oversight over the agency assigned to lead a review or investigation;</p> <p>3) the Speaker and the Minority Leader of the House of Representatives; and</p> <p>4) the chair and ranking member of the Committee on Financial Services of the House of Representatives and of any committee of the House of Representatives having oversight over the agency assigned to lead a review or investigation.</p>
<p>No comparable provision.</p>	<p>Notice to Governors of transactions involving critical infrastructure.</p> <p>The Majority Leader or the Minority Leader in the Senate and the Speaker or the Minority Leader of the House of Representatives may provide the notices and reports involving critical infrastructure to members of the Senate from the State in which the critical infrastructure is located; and to a member from a Congressional District in which the critical infrastructure is located.</p>
<p>Semi-Annual Report to the Congress.</p> <p>CFIUS would be required to transmit a report to the Congress before January 31 and July 31 of each year on all the reviews and investigations of transactions conducted during the six-month period covered by the report.</p>	<p>No comparable provision.</p>
<p>The semi-annual report would contain:</p> <p>1) A list of all notices filed and all reviews or investigations conducted during the period with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about the status of the review or investigation, information on any withdrawal from the process, any roll call votes by CFIUS, any extension of time for</p>	<p>No comparable provision.</p>

H.R. 5337
Reform of National Security Reviews
of Foreign Direct Investments Act

S. 3549
Foreign Investment and National
Security Act of 2006

any investigation, and any presidential decision or action.

2) Specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and presidential decisions or actions under the section.

3) Cumulative and, as appropriate, trend information on the business sectors involved in the filings and the countries from which the investments originated.

4) Information on whether companies that withdrew notices to the Committee later re-filed the notices, or, alternatively, abandoned the transaction.

5) The types of security arrangements and conditions the Committee used to mitigate national security concerns about a transaction.

6) A detailed discussion of all perceived adverse effects of transactions on the national security or critical infrastructure of the United States that the Committee would take into account in its deliberations during the period before delivery of the next semi-annual report, to the extent possible.

Semi-annual report on critical technologies.

The President would be required to submit to Congress as part of CFIUS's semi-annual report a section on critical technologies that would include the following:

1) An evaluation of whether there is credible evidence of a coordinated strategy by one or more countries or companies to acquire U.S. companies involved in research, development, or production of critical technologies for which the United States is a leading producer.

2) An evaluation of whether there are

Annual Reports on defense production and critical infrastructure.

The Secretary of the Treasury would be required to submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on or before March 15 of each year, a written report on the policy of the United States with respect to the preservation of the Nation's defense production and critical infrastructure.

The Secretary would be required to appear before both committees to provide testimony on the reports.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.	Each report would be required to contain: <ol style="list-style-type: none"><li data-bbox="824 373 1317 659">1) an analysis of each transaction involving a foreign person or foreign government affecting national security that has occurred during the preceding year to which the report relates, including the nature of the acquisitions and the effect or potential impact of the acquisitions on the United States defense industrial base and critical infrastructure;<li data-bbox="824 699 1317 953">2) a similar updated analysis for any transaction that occurred during the four years immediately preceding the current year, including a separate section discussing the impact of transactions involving foreign governments or persons acting on behalf of or in concert with foreign governments;<li data-bbox="824 993 1317 1178">3) a detailed discussion of all perceived risks to national security or United States critical infrastructure that CFIUS will take into account in its deliberations during the year in which the report is delivered to the committees;<li data-bbox="824 1218 1317 1472">4) a table showing on a cumulative basis, by sector, product, and country of foreign ownership, the number of acquisitions reviewed, investigated, or both, by CFIUS, to provide a census of production potentially relevant to the Nation's defense industrial base owned or controlled by foreign persons or foreign governments;<li data-bbox="824 1512 1317 1797">5) an evaluation of whether there is credible evidence of a coordinated strategy by one or more countries or companies to acquire critical infrastructure of or within the United States or United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer;<li data-bbox="824 1837 1317 1932">6) an evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
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against private United States companies aimed at obtaining commercial secrets related to critical technologies or critical infrastructure; and

7) such other matters as are necessary to give a complete disclosure and analysis of the work of CFIUS during the year to which the report relates.

Confidentiality of information.

Information provided by participants and considered as proprietary information would be classified and not released to the public. Members of Congress and staff of either House or any committee of the Congress would be subject to these same limitations.

Proprietary information which can be associated with a particular party to a transaction would be furnished only to a committee of the Congress and only when the committee provides assurances of confidentiality, unless the party consents in writing to disclosure.

In those cases where parts of the report are classified, an unclassified version of that portion of the report would be required to be made available to the public.

Requests for Briefings.

If a written request for a briefing on a transaction is submitted to CFIUS by any Senator or Member of Congress, CFIUS would be required to provide a classified briefing to each House of the Congress in a secure facility open only to the Majority Leader and the Minority Leader of the Senate, the Speaker and the Minority Leader of the House of Representatives, the chairman and ranking member of each committee of the House of Representatives or the Senate (as the case may be) with jurisdiction over any aspect of the covered transaction and its possible effects on national security, and appropriate staff members who have security clearance.

Classified reports.

In those cases where parts of a report contain classified information, an unclassified version of the evaluations would be required to be made available to the public.

The chairperson of CFIUS, in consultation with the vice chairperson of CFIUS, may withhold proprietary information from public release.

The above restrictions, however, would not prohibit CFIUS from providing the information to relevant committees of Congress.

Annual appearances before Congress.

The chairperson and vice chairperson of CFIUS, and the heads of such additional CFIUS member agencies specified in a written request by the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate would be required to appear annually before the Committee on Banking, Housing, and Urban Affairs and the Committee on Financial Services of the House of Representatives to provide testimony on the activities of CFIUS.

H.R. 5337 Reform of National Security Reviews of Foreign Direct Investments Act	S. 3549 Foreign Investment and National Security Act of 2006
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Investigation by Inspector General.**No comparable provision.**

The Inspector General of the Department of the Treasury would be required to conduct an independent investigation to determine all of the facts and circumstances concerning each failure of the Department of the Treasury to make any report to the Congress that was required under section 721(k) of the Defense Production Act of 1950 (as in effect before the date of the enactment of this act).

Before the end of the 270-day period beginning on the date of the enactment of this act, the Inspector General of the Department of the Treasury would be required to submit a report to the Congress on the investigation under paragraph (1) containing the findings and conclusions of the Inspector General.