

National Security Review of Foreign Direct Investment:

AN ANALYSIS OF INDIA'S PROPOSED NATIONAL SECURITY EXCEPTION ACT

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Domestic Reform—The National Security Exception Act

Foreign Direct Investment (FDI) is important to India's economic development and its maintenance of security because, as exemplified by India's changing relationship with China and Pakistan, a growing economy enhances national security.¹ Ironically, the acquisition of FDI that India needs to preserve its regional security can pose a threat to *domestic* security because of the fear that foreign companies, through investment and ownership, can gain significant access to India's industries, critical infrastructure, and government.² Specifically, India's recent increase of permissible foreign ownership in Indian companies from 49% to 74% has added fuel to the fear that India is relinquishing its sovereignty.³ Competing domestic security concerns therefore require India to strike a balance between the acquisition and promotion of FDI and the preservation of domestic security.⁴ In the future, to prevent corporate espionage and the entry of foreign governments into sensitive sectors, India's government must institute a comprehensive plan to evaluate FDI proposals.

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Currently, members of the Indian government oppose foreign investment in certain sectors like telecommunications and high technology for security reasons.⁵ Members are especially concerned with investment in these sectors from China, Pakistan, Bangladesh and states in the Middle East.⁶ In response to this apprehension and to address the brewing problem, near the end of 2006, the Indian National Security Council Secretariat proposed the National Security Exception Act (NSEA).⁷ This legislation, though still under discussion, intends to condense the process by which certain forms of FDI are denied and to create a transparent and predictable system to motivate corporations to invest in India.⁸



A. NSEA—Background and General Arguments

Currently, India has no formal mechanism to evaluate the national security implications of FDI proposals. As a result, fear of domestic security vulnerabilities has at times prevented otherwise beneficial inflows of FDI.⁹ India's current FDI policies are scattered across numerous statutes and do not provide an ordered structure to protect the country from unfriendly FDI.¹⁰

Four main laws regulate FDI¹¹ in the areas of investment, industry, securities, and corporations, but they all fail to attract and maintain foreign investors because they do not set forth procedures, safeguards, rights, and incentives that are usually inherent to investment laws.¹² Instead, the laws delegate authority to various agencies and state or governmental bodies, which undermine and lower the efficiency of the FDI approval process.¹³ As such, FDI decisions are made in an opaque, restrictive, arbitrary and non-collaborative¹⁴ fashion. Hence, it is difficult to predict the actions of the Indian government, and this unpredictability leads companies to direct their investment efforts toward other countries where consistency and reliability give the investor a better idea of how to prepare proposals that will be approved.¹⁵

Though the actual text of the NSEA is not yet available, many members of the Indian government and trade associations have made positive statements regarding the purpose and the structure of the act. According to Commerce Minister Kamal Nath, the NSEA will be similar to legislation in the U.S. and Europe governing FDI.¹⁶ Minister Nath along with

R. Seshasayee, President of the Confederation of Indian Industry (CII), and B. Praphakar, President of the Indo-American Chamber of Commerce, argue that because of the specificity that NSEA deals with the affected sectors and industries, transparency in the review process, and accountability of the decision makers embedded into the legislation, enactment will pose little risk to FDI inflow.¹⁷ This prevents corrupt activities among those on the approval committee and allows for a fair and open national security review process.

Despite the potential benefits of the NSEA, the Government of India must quell political concerns from government and corporate officials who have expressed fear that the NSEA review process will complicate approval procedures and create further obstacles for companies hoping to invest in India.¹⁸ These same officials are apprehensive that the intelligence community and the military would take charge of economic policy.¹⁹ They fear that because national security is the focus of NSEA review, intelligence officials will have input on FDI decisions.²⁰ Such scrutiny from non-economic experts may deter the amount of investment entering India.²¹ Above all, these individuals have expressed concern that the NSEA was not well negotiated.²² In response to these concerns, commentators have proposed suggestions to modify the NSEA in a manner that can mitigate these concerns.²³



over of a U.S. company upon finding that the transaction could affect U.S. national security.²⁹ The provision created an independent committee, the Committee of Foreign Investments in the United States (CFIUS), to investigate companies that wish to invest in the U.S. and report to the President with a recommendation.³⁰ CFIUS consists of twelve

members, including one member each from the Departments of Treasury,³¹ Commerce, Defense, Homeland Security, Justice, and State; and six from the Executive Office of the President,³² including representatives of the Council of Economic Advisors, Office of the Trade Representative, Office of Management and Budget, National Economic Council, National Security Council, and Office of Science and Technology Policy.³³ Based on the recommendation of this committee, the President decides whether to allow or to prohibit incoming FDI.³⁴

In order for the NSEA in India to have the desired effect, the government should use Exon-Florio and CFIUS as a framework and improve on them to match India's needs. Incorporating an NSEA structure based off the successful but improvable Exon-Florio provision would be an acceptable way to form the NSEA while demonstrating India's desire to protect national security and to foster FDI.³⁵ The major concerns in India in creating the NSEA arise from governmental corruption, a lack of transparency, arbitrariness of FDI denial, and the over-militarization of the selection process.³⁶

C. Suggestions for Improving FDI in India

India should adopt certain ideas from Exon-Florio, but in order to address Indian concerns, the government should enact changes that would improve the FDI selection process. First, as Exon-Florio created CFIUS, the NSEA should have a provision that forms a committee to manage and to review FDI proposals.³⁷ In order to calm fears in India that this type of regime would give the bureaucracy too much control over the FDI approval process,³⁸ a CFIUS-type committee would reduce the red tape and streamline all security related FDI proposals to this one group of diverse entities, which would include representative from the various agencies which currently make such decisions independently. This would allow investors to understand the review process and to make inquiries if desired.

The resulting predictability and openness would remove barriers to foreign investment because companies would be better prepared to draft successful proposals. Additionally, including

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B. Implementation of the NSEA

In order to maintain the goal of the NSEA as being a guardian, not regulator, of FDI, the FDI security reviews must be narrowly focused on the actual threats to India.²⁴ Additionally, for the characteristics that the above interviewees support,²⁵ India may be well-served by adopting and improving upon the framework of a similar law passed in the United States: The Exon-Florio provision to the Defense Production Act (Exon-Florio).²⁶ NSEA legislation similar to Exon-Florio would offer India's FDI regime stability and clout due to the United States' experience in implementing such legislation and would have the added effect of improving trade relations between India and the US.²⁷

Exon-Florio controls FDI in the United States.²⁸ The provision gives the President of the United States the right to suspend or prohibit any foreign acquisition, merger, or take-

diverse interests in the decision making process addresses concerns in India that responsibility for FDI approval would pass to the military exclusively. For example, although the CFIUS in the United States incorporates officials from the State, Defense, and Homeland Security departments, it is always headed by the Treasury Department.³⁹ This maintains the focus of CFIUS as an investment-based committee rather than one centered on intelligence and defense.⁴⁰ The primary goal of Exon-Florio is to maintain the United States' attractiveness to FDI while protecting the country from security threats; similarly, an Indian counterpart to CFIUS headed by the Commerce Ministry, Finance Ministry, or an official from the Reserve Bank of India⁴¹ would protect FDI review process from undue military influence and protect the mission of the NSEA: to maintain India's security while encouraging FDI.⁴²

Second, the arbitrariness of the current Indian FDI review process is a natural deterrent to FDI. Although India has begun to reform FDI policies,⁴³ India is combating a poor FDI image partly because it has allegedly exhibited a refusal to accept investment from specific countries like China.⁴⁴ Indian officials worry that without specificity in the NSEA regarding FDI review, the system would not be predictable enough to invite investment.⁴⁵ To counter this fear, the NSEA will need to delineate specifically which sectors and industries on which the government will focus. The U.S. has identified certain industries that require CFIUS review such as power, banking, aircraft, maritime, and natural resources. However, India needs to go beyond the Exon-Florio rules⁴⁶ because although the U.S. maintains specificity it does not define "National Security,"⁴⁷ a weakness which removes some of the predictability it is intended to promote⁴⁸ and unnecessarily widens the scope of industries subject to CFIUS review. For the NSEA to maintain strength and predictability, India should specifically designate industry sectors critical to National Security to enable a less arbitrary system of security review and to lower the risk of unnecessarily deterring investment.

Third, the Indian Government must confront the lack of transparency and presence of substantial government corruption that may hinder effective implementation of the NSEA. Currently, the Indian government experiences many instances of corruption in the form of bribes and self-interest actions,⁴⁹ and there needs to be accountability when performing the NSEA reviews in order to produce a fair system. The CFIUS procedure required the committee to send reports to Congress every four years and a report after each presidential decision made based on the CFIUS recommendations,⁵⁰ which opened up the CFIUS

process to different divisions within the government.⁵¹ Due to a change in the law signed by President Bush on July 26, 2007, beginning October 24, 2007, Congress will receive a yearly report from CFIUS and will have the authority to require briefings on any transactions.⁵² Similar Parliamentary oversight of NSEA reviews in India would be essential to check the actions of the Prime Minister and the NSEA committee, ensuring an open process.

The NSEA, however, must offer the Parliament more oversight responsibility than Exon-Florio offers the U.S. Congress.⁵³ Failures of CFIUS to report to Congress highlight the need for proper accountability and transparency. The U.S. Congress has proposed that more detailed reports be given to them every quarter to allow them to monitor the President's final decisions.⁵⁴ If India constructs the NSEA similarly to Exon-Florio, similar monitoring might counter the security review process and hinder FDI.⁵⁵ As the purpose is to facilitate fast and open review, Parliamentary oversight should not be substituted for Parliamentary approval.⁵⁶ The NSEA must adopt rules that require more oversight powers to the Parliament via more frequent reports or testimony so it can oversee NSEA actions and improve on them as they see fit.⁵⁷ Annual reports as required in the new law may fare better for the United States, and India should consider this example, however,

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with a stringent enforcement policy to ensure that the reports are actually filed (to avoid the United States' non-reporting issue).

By adopting these measures from Exon-Florio and improving on some of them, the National Security Exception Act will adopt the best provisions from the United States while addressing the concerns voiced by Indian officials. Speed, accountability, transparency, corruption, and arbitrariness will be dealt with while welcoming FDI. As CFIUS and Exon-Florio have generally been effective tools to protect national security, the NSEA can remove the deterrent effect of India's current protection procedures.

Conclusion

India is in dire need of FDI in order to expand and become a Southeast Asian and global economic power. However, it is imperative that India strike a fair balance between protecting national security and inviting investment. The United States mimics India's concerns and has created a working mechanism to meet this balance, and although it requires some improvement, the US system is a solid starting point for India. The NSEA has the potential to meet the needs of both India's businesses and citizens, and adopting the NSEA will only add to India's presence in the world as a bastion for economic growth and leadership. **BLB**

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¹ See *The U.S.-India “Global Partnership:” How Significant for American Interests?: Hearing Before the H. Comm. On Int’l Relations*, 109th Cong. 30–33 (2005) (statement of Francine R. Frankel, PhD, Director, Center for the Advanced Study of India, University of Pennsylvania) (stating that India does not believe that there will be a war with China and that economic competition is a more effective tool); Daniel W. Drezner, U.S. TRADE STRATEGY: FREE VERSUS FAIR 21 (Council on Foreign Relations 2006) (arguing that the prospect of a South Asian free trade association has led India and Pakistan to mitigate their rivalry).

The United States is working toward expanding trade and liberalizing developing nations because there is a direct link between free economic development and political stability. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, 378–79 (2004) [hereinafter *9/11 Report*], available at <http://www.gpoaccess.gov/911/pdf/sec12.pdf>.

² See *Security Safeguard in New Law on FDI*, THE TELEGRAPH, Aug. 18, 2006, http://www.telegraphindia.com/1060818/asp/business/story_6624380.asp [hereinafter *Security Safeguard*] (discussing that India is committed to “check FDI . . . in sensitive sectors” such as telecom, ports, insurance, pharmaceuticals, oil exploration, and processing); Interview by unnamed CNBC-TV18 reporter with TSR Subramanian, Former Cabinet Secretary, Surjit Bhalla, Managing Director O(X) US Investments, and Rakiv Kumar, Director & Chief Executive ICRIER, in India (Oct. 17, 2006), available at <http://www.moneycontrol.com/india/news/editorial/nationalsecuritycouncilformercabinetsecretary/howdoweidentifylaunderedmoneybhalla/market/stocks/article/246042>) (referring to the interviewer’s opening remarks before commencing the questioning).

³ See Ambassador Ronan Sen, Remarks at American University (Oct. 16, 2006) (on file with Brief).

⁴ Puja Mehra, *Eagle Eye On FDI*, INDIA TODAY, Sept. 18, 2006, http://www.mycii.org/library/Article%20Alerts/articles/0609/eagle_eye_on_fdi_concerned_about.htm (quoting Indian Commerce & Industry Minister Kamal Nath, who spoke about the caveat involved in approving FDI, “We need a proper regulatory framework to address issues about our security concerns and sensitivities.”).

⁵ Rishi Raj, *Revert to 49% FDI in Telecom Frims: DoT*, THE FINANCIAL EXPRESS, Sept. 26, 2006, <http://in.biz.yahoo.com/060926/203/67xkl.html> (reporting then Defense Minister’s (explaining current Foreign Minister’s opposition to an unrestrained opening of India to FDI).

⁶ *Sino Things to Come?*, *The Economist*, Oct. 26, 2006, [hereinafter *Sino*] available at http://www.economist.com/world/asia/displaystory.cfm?story_id=8086832; *Security Safeguard*, *supra* note 2.

⁷ This act, still in its formative stage, will provide India with a procedure by which to examine FDI and allay national security concerns that may arise. See *Security Law For FDI in the Works, Says Govt.*, THE INDIAN EXPRESS, Aug. 18, 2006, <http://indian.express.com/printfriendly/10809.html> [hereinafter *FDI in the Works*].

⁸ Murali Krishnan, *Foreign Investors Seek Transparent Rules of Engagement*, INDO-ASIAN NEWS SERVICE, Aug. 22, 2006, http://news.monstersandcritics.com/india/printer_1193082.php (explaining that currently, screening FDI for National Security purposes is arbitrary, subjective, and time-consuming, and the NSEA will streamline the process and make the system fair).

⁹ See Rohit Sachdev, *Note, Comparing the Legal Foundations of Foreign Direct Investment in India and China: Law and the Rule of Law in the Indian Foreign Direct Investment Context*, 2006 COLUM. BUS. L. REV. 167, 197 (2006) (explaining that India leaves much of the FDI approval process to various administrative bodies, limiting transparency and making denials arbitrarily). The Indian Communications and IT Minister, Dayanidhi Maran, cautions against overreacting “in the name of national security” and promotes creating a solution that addresses the security fear of the National Security Council without affecting FDI negatively. *FDI in Telecom: Maran Upholds National Security*, EFY NEWS NETWORK, Oct. 27, 2006, available at <http://www.efytimes.com/efytimes/fullnews.asp?edid=15125>.

¹⁰ See Sachdev, *supra* note 10, at 197.

¹¹ The Foreign Exchange Management Act (FEMA) 1999, the Industries (Development and Regulation) Act 1951, the Companies Act 1956, and the Takeover Code of Stock Exchange Board of India (SEBI) are the four main laws. *Id.*

¹² *Id.* (listing as an example that FEMA does not allow for legislative-level decision making on FDI-related matters, leaving such decisions in the hands of administrative bodies). This (1) makes it seem that India is not serious about attracting FDI because the laws are not centrally controlled, and (2) leads to a lack of predictable investor expectations. *Id.*

¹³ *Id.*

¹⁴ Unlike the United States where the similar procedures involve many divisions of the government, India does not incorporate varied perspectives in national security review but has almost a free-for-all among the ministries arguing security versus development. See *Testimony of Katherine Schinasi, Managing Director Acquisition and Sourcing Management, Before the Senate Banking, Housing, and Urban Affairs Committee*, 109th Cong. 1 (2006), available at <http://www.gao.gov/new.items/d06135t.pdf>; Siddarth Srivastava, *Chinese Blocked from India’s Ports*, ASIA TIMES, Sept. 1, 2006, available at http://www.atimes.com/atimes/South_Asia/H101Sf02.html.

¹⁵ The current national security approval process is done through an ad hoc procedure R. Prema, *Security Clearance a Must for FDI in India*, REDIFF INDIA ABROAD, Sept. 1, 2006, <http://www.rediff.com/money/2006/sep/01security.htm>; Sachdev, *supra* note 10, at 197 (identifying that potential investors have already demonstrated that navigating excessive bureaucratic hurdles creates a disincentive for them to invest).

¹⁶ Mehra, *supra* note 3.

¹⁷ See Krishnan, *supra* note 9 (noting the support from the Indo-American Chamber of Commerce and the Confederation of Indian Industry); *Law Soon to Regulate FDI Flows in Sensitive Areas: Kamal Nath*, THE HINDU BUSINESS LINE, Aug. 18, 2006, <http://www.thehindubusinessline.com/2006/08/18/stories/2006081802690500.htm> (identifying Commerce and Industry Minister Kamal Nath as a advocate of the NSEA).

¹⁸ Interview by unnamed CNBC-TV18 reporter with R. Seshasayee, President of CII and former member of Telecom Regulatory Authority of India, DPS Seth, in India (Aug. 18, 2006) available at <http://mutualfunds.moneycontrol.com/india/news/editorial/presidentciirseshasayee/willnationalsecurityexceptionactdeterfdi/market/stocks/article/235211>.

¹⁹ Interview with TSR Subramanian, *supra* note 2.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ “Countries could use the U.S. example to restrict capital flows under the pretext of enhancing security.” Alan P. Larson and David M. Marchick, *Foreign Investment and National Security: Getting the Balance Right*, 18 COUNCIL SPECIAL REPORTS 8 (2006). The Russians and Chinese are planning to adopt a CFIUS-type process. *Id.*

²⁴ These threats generally come from, but are not limited to Pakistan, China, and the Middle East, but because India cannot outright discriminate against those states, the NSEA will provide an open process by which to measure the threat. *Sino, supra* note 6.

²⁵ See Interview with R. Seshasayee, *supra* note 19.

²⁶ 50 U.S.C. app. § 2170 (2000).

²⁷ A closely constructed security rule between two states, like the NSEA, can create sufficient safeguards to negotiate trade. See Peter Lichtenbaum, *National Security, and U.S. Trade and Investment Policy*, in COPING WITH U.S. EXPORT CONTROLS 2005 313, 329 (Practicing Law Inst., 2005).

²⁸ Daniella Markheim, *The Need for CFIUS Reform to Address Homeland Security Concerns*, 944 HERITAGE LECTURES 2 (2006), available at <http://www.heritage.org/research/homelanddefense/hl944.cfm> (published by The Heritage Foundation) (noting that the act is structured to offer an objective mechanism to review FDI that has potential to threaten national security).

²⁹ § 50 U.S.C. app. 2170(b); see *Markheim*, *supra* note 29.

³⁰ § 50 U.S.C. app. 2170(a)–(c) (allowing the President or his *designee* to perform the investigations of FDI). This is different from other portions of the statute where the President *alone* is permitted to make decisions, but another party can conduct the investigations. *Id.* at § 2170(d), (e), (g)–(k). Exec. Order No. 12,661, 54 Fed. Reg. 779 (Jan. 9, 1989); see James K. Jackson, *The Exon-Florio National Security Test for Foreign Investment*, CONGRESSIONAL RESEARCH SERVICE 3 (2006), available at <http://www.fas.org/sgp/crs/natsec/RS22197.pdf> (within 75 days of receiving an FDI approval request, CFIUS must make a recommendation to the President who then has 15 days to act).

³¹ The treasury department always chairs the committee. Lichtenbaum, *supra* note 28, at 324.

³² Schinasi, *supra* note 15.

³³ *Id.* at 12.

³⁴ Jackson, *supra* note 32; see § 50 U.S.C. app. 2170(e) (stating that the President is permitted to exercise his authority over the recommendations only in certain situations).

³⁵ Because the Exon-Florio provision is not currently viewed as an FDI deterrent, basing the NSEA in part on Exon-Florio will improve India's attractiveness to FDI. See Press Release, Institute for International Economics, Exon-Florio Reform Could Hinder Investment to the United States (May 18, 2006) (on file with author) [hereinafter *E-F Reform*].

³⁶ Interview with TSR Subramanian, *supra* note 2 (discussing that certain high level Indian officials fear the NSEA will lead to the loss of an economist's leadership in approving FDI for that of a military body); Krishnan, *supra* note 9 (relaying the Foreign Institutional Investors' and Indo-American Chamber of Commerce's support of the NSEA because it will help investors understand Indian policy and induce transparency); Interview with R. Seshasayee, *supra* note 19 (advocating that with accountability and openness embedded into the legislation, the NSEA will help the country); *Security Safeguard*, *supra* note 2 (reporting that currently, without the NSEA, the Indian government decides the admissibility of FDI proposals on an *ad hoc* basis).

³⁷ See generally 50 U.S.C. app. § 2170; Exec. Order No. 12,661, 54 Fed. Reg. 779 (Jan. 9, 1989).

³⁸ India's FDI approvals consist of separate state and federal agencies who are delegated responsibility to evaluate the proposals which make the process less certain because there is no communication between the state and the federal levels. See Sachdev, *supra* note 10, at 197–204. Although the members within CFIUS argue and debate about each proposal, the President need not turn to any other source. See § 2170(k) (allowing Congressional oversight but no veto authority); Larson, *supra*, note 24, at 9.

³⁹ Lichtenbaum, *supra* note 28, at 324.

⁴⁰ See *E-F Reform*, *supra* note 37 (advocating that the Treasury is the best department to chair CFIUS but that it can still defer to security agencies); see also Larson, *supra* note 24, at 13–14 (arguing that many critique CFIUS because Treasury does not give national security concerns the proper weight, but Treasury is a member of the National Security Council, it has its own intelligence service, and takes charge of terrorist financing operations). It has the proper balance of security and monetary knowledge. *Id.*

⁴¹ Reserve Bank of India, <http://www.rbi.org.in/scripts/AboutusDisplay.aspx> (last visited Nov. 17, 2006) (India's central bank).

⁴² *FDI in the Works*, *supra* note 7 (quoting Kamal Nath who expresses that the NSEA “would not send any wrong signals” to other countries planning to invest in India); see also Round-the-Clock vigil on Foreign Cos, THE TIMES OF INDIA, Oct. 17, 2006, <http://timesofindia.indiatimes.com/articleshow/2181251.cms> (claiming that Indian Prime Minister Singh does not wish to deny any investment proposals outright).

⁴³ India passed the Right to Information Act to demonstrate its stance on reducing governmental corruption and increasing transparency. See Mike Rake, *Scoring India and the Way Forward*, WORLD ECONOMIC FORUM, Dec. 12, 2006, <http://www.weforum.org/en/events/india/IssuesinDepth/RakeInterview/index.htm>; Ronan Sen, Indian Ambassador to the United States, Remarks at American University, School of International Service (Oct. 16, 2006) (discussing that India is now allowing foreign ownership of up to 74%).

⁴⁴ India claims that there is “no overall ban on . . . Chinese companies.” Srivastava, *supra* note 15. However, India denied Hutchinson Port Holdings, Kaidi Electric Power Company, and Chinese Harbor Engineering Company—all Chinese companies—from investing. *Id.* Two others are also in the process of being denied; thus, to eliminate any sign of impropriety by the Indian government, it has proposed the NSEA. *Id.*

⁴⁵ See Seshasayee, *supra* note 19 (relaying R. Seshasayee's belief that the NSEA can combat arbitrary behavior if the legislation is not generic about the sectors it is protecting).

⁴⁶ Jackson, *supra* note 32, at 5. So, as specificity is an Indian requirement, the NSEA must refrain from over-restricting sectors. *But see* Larson, *supra* note 24, at 29 (explaining that the nature of the industry does not always require national security protection; at times FDI into these industries helps to develop them and improve national security).

⁴⁷ See Marcia G. Madsen, *Exon-Florio Considerations for Foreign Investment in the United States*, in 1 MANUAL OF FOREIGN INVESTMENT IN THE UNITED STATES 586, 600 (J. Eugene Marans et al. eds., West 3d ed. 2004) (stating that Exon-Florio provides only general suggestions about how to determine if a transaction threatens national security).

⁴⁸ Without a clear definition, the line between national security and economic security is easily blurred creating discord within the investigating committee, leading to irreparable compromises. *Id.* at 601; see Schinasi, *supra* note 15, at 6 (discussing one example where the difference in the interpretation of national security among the Defense, Treasury, and Homeland Security departments led to the removal of the enforcement clause in an agreement, eliminating the President's ability to remedy noncompliance).

⁴⁹ The government corruption becomes a tax burden on companies and impedes the desire to operate in India. See Mark B. Baker, “Awakening the Sleeping Giant:” *India and Foreign Direct Investment in the 21st Century*, 15 IND. INT'L & COMP. L. REV. 389, 417 (2005).

⁵⁰ 50 U.S.C. app. § 2170(g), (k) (2006).

⁵¹ *Id.* (attempting to disseminate information between the legislative and executive branch by requiring reports in order to maintain a checks and balances system).

⁵² 50 U.S.C. app. § 2710 as amended by the July 26, 2007 act.

⁵³ The problem with the current reporting system is that Congress only receives reports when the President makes a decision, and there have been only two since 1997. Schinasi, *supra* note 15, at 9. Additionally, under the older system (in effect until Oct. 24, 2007) Congress requires one comprehensive report every four years, which it has not received since 1994. *Id.* The updated law requiring annual reports may change this.

⁵⁴ Lichtenbaum, *supra* note 28, at 325–26. These proposals were not included in the new July 26, 2007 act.

⁵⁵ See Larson, *supra* note 24, at 28 (declaring that this proposition would only create uncertainty in the review process and consequently dissuade a “substantial number” of foreign investors).

⁵⁶ The U.S. Congress is entitled to reports that are more frequent to oversee the process, but for a successful streamlined review to occur, Congress cannot be a decision-maker. Markheim, *supra* note 29, at 3 (noting that Congress “sets the law . . . and enforce[s] the law” without having a role in the decisions); *E-F Reform*, *supra* note 37. The same logic can apply to India and its parliament.

⁵⁷ More oversight brings transparency and accountability to the process. Interview with Seshasayee, *supra* note 19 (stating that these are two integral parts of the legislation).

⁵⁸ See *supra* notes 9–13 and accompanying text.