

AMENDMENT TO H.R. 3838
OFFERED BY MR. DELUZIO OF PENNSYLVANIA

At the appropriate place in title VIII, insert the following:

1 **SEC. 8 _____. SECRETARY OF DEFENSE REVIEW OF PRO-**
2 **SPECTIVE COVERED TRANSACTIONS.**

3 (a) IN GENERAL.—

4 (1) PROHIBITION.—A major defense supplier
5 may not acquire (directly or indirectly) through a
6 covered transaction any voting securities or assets of
7 any other person if the Secretary determines that
8 the covered transaction is likely to harm the public
9 interest.

10 (2) DEADLINE; PUBLICATION.—Not later than
11 120 days after the date on which the Secretary re-
12 ceives notification of a covered transaction, the Sec-
13 retary shall determine whether the covered trans-
14 action is likely to harm the public interest and shall
15 make such determination publicly available on a
16 website of the Secretary. A determination that a cov-
17 ered transaction is not likely to harm the public in-
18 terest shall include a substantive justification

1 (3) COMPULSORY PROCESS.—The Secretary
2 may use compulsory process, including issuing sub-
3 poenas or civil investigative demands, to determine
4 whether a covered transaction is likely to harm the
5 public interest.

6 (b) STANDARDS REGARDING HARM TO THE PUBLIC
7 INTEREST.—

8 (1) IN GENERAL.—In determining whether a
9 covered transaction is likely to harm the public in-
10 terest under subsection (a), the Secretary of Defense
11 shall evaluate the following:

12 (A) Potential harms to competition, na-
13 tional security, sustainment of the industrial
14 and technological base, innovation, access to
15 critical technologies, the workforce, or talent
16 management.

17 (B) Potential effects on competition for
18 contracts and subcontracts of the Department
19 of Defense, including future programs and tech-
20 nologies of interest to the Secretary.

21 (C) Potential restrictions or impaired ac-
22 cess of a critical supplier to a competitor or a
23 potential restriction or impaired market access
24 by a supplier.

1 (D) Potential risks to the financial sta-
2 bility and continued stewardship of critical mili-
3 tary capabilities, including any anticipated cost
4 increase.

5 (E) Any other factor resulting from the
6 covered transaction that might adversely affect
7 the satisfactory completion of current or future
8 programs or operations of the Department of
9 Defense.

10 (F) Any other aspect of the covered trans-
11 action that might impact the access of the Sec-
12 retary of Defense to affordable or innovative
13 sources to include impediments to obtain essen-
14 tial data rights.

15 (c) DETERMINATION.—Notwithstanding any other
16 harms to the public interest that may be determined when
17 evaluating a covered transaction under subsection (a), the
18 Secretary may determine that the covered transaction is
19 likely to harm the public interest if—

20 (1) a party to the covered transaction is a crit-
21 ical trading partner of the major defense supplier;

22 (2) a party to the covered transaction offers
23 overlapping, competing, or functionally equivalent
24 services or products to those of the major defense
25 supplier;

1 (3) the acquiring person would have a market
2 share of greater than 33 percent of any relevant
3 market; or

4 (4) the transaction would result in a
5 Herfindahl-Hirschman Index value greater than
6 1,800 in any relevant market and increase the
7 Herfindahl-Hirschman Index value by more than
8 100 in such relevant market.

9 (d) DEFINITIONS.—In this section:

10 (1) The term “covered transaction” means an
11 actual or proposed merger, acquisition, joint venture,
12 strategic alliance, or investment—

13 (A) for which the parties are required to
14 file a notification under section 7A of the Clay-
15 ton Act (15 U.S.C. 18a); and

16 (B) any party to the transaction is, owns,
17 or controls a major defense supplier.

18 (2) The term “critical trading partner” means
19 a person that has the ability to restrict, impede, or
20 foreclose access to inputs, customers, partners,
21 goods, services, technology, platforms, facilities, or
22 tools of the person in a way that harms the competi-
23 tive process or limits the ability of the customers or
24 suppliers of the person to carry out business effec-
25 tively.

1 (3) The term “Secretary” means the Secretary
2 of Defense.

3 (4) The term “major defense supplier”
4 means—

5 (A) a prime contractor performing a con-
6 tract relating to a major system as defined in
7 section 3041, of title 10, United States Code;

8 (B) a prime contractor performing a con-
9 tract awarded pursuant to section 3204(a)(3),
10 title 10, United States Code, for reasons de-
11 scribed in subparagraph (A) of that section; or

12 (C) a prime contractor or subcontractor
13 that the Secretary of Defense, the Deputy Sec-
14 retary of Defense, the Under secretary of De-
15 fense for Acquisition and Sustainment, or the
16 Assistant Secretary of Defense for Industrial
17 Base Policy designates as a main source of sup-
18 ply, including an entity that supplies or could
19 supply goods or services directly or indirectly to
20 the Secretary or any entity with technology po-
21 tentially significant to defense capabilities.

