

CHAPTER 46A—FOREIGN DIRECT INVESTMENT AND INTERNATIONAL FINANCIAL DATA

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§ 3141. Congressional findings

The Congress makes the following findings:

(1) The United States Government collects substantial amounts of information from foreign owned or controlled business enterprises or affiliates operating in the United States.

(2) Additional analysis and presentation of this information is desirable to assist the public debate on the issue of foreign direct investments in the United States.

(3) Information collected from foreign owned or controlled firms by the Bureau of Economic Analysis has serious analytical limitations because it is largely collected on an “enterprise” basis that does not permit an adequate analysis by industry groupings.

(4) Statistical and analytic comparisons of the performance of foreign owned or controlled businesses operating within the United States with other business enterprises operating within the same industry can be accomplished under sections 3101(b) and 3104(c) of this title, and under Executive Order Numbered 11961, without the need to collect additional information, by sharing with other authorized Government agencies the employer identification numbers maintained by the Bureau of Economic Analysis.

(5) Public disclosures of confidential business information collected by the United States Government relating to international direct investment flows could cause serious damage to the accuracy of the statistical data base.

(6) The Government Accountability Office may have limited access to Government data on foreign direct investment.

(Pub. L. 101-533, §2, Nov. 7, 1990, 104 Stat. 2344; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Par. (6). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

REFERENCES IN TEXT

Executive Order Numbered 11961, referred to in par. (4), is set out as a note under section 3101 of this title.

SHORT TITLE

Pub. L. 101-533, §1, Nov. 7, 1990, 104 Stat. 2344, provided that: “This Act [enacting this chapter and section 401 of Title 13, Census, and amending sections 3101 and 3103 to 3105 of this title and section 9 of Title 13] may be cited as the ‘Foreign Direct Investment and International Financial Data Improvements Act of 1990’.”

§ 3142. Report by Secretary of Commerce

(a) Annual report on foreign direct investment in United States

Not later than 6 months after November 7, 1990, and not later than the end of each 1-year period occurring thereafter, the Secretary of Commerce shall submit to the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives, to the Committee on Commerce, Science, and Transportation of the Senate, and to the Joint Economic Committee of the Congress a report on the role and significance of foreign direct investment in the United States. Such report shall address the history, scope, trends, market concentrations, and effects on the United States economy of such investment. In addition, the Secretary of Commerce shall, if requested by any such committee, appear before that committee to provide testimony with respect to any report under this subsection.

(b) Sources of data

In preparing each report under subsection (a), the Secretary of Commerce, or the Secretary’s designees, shall consider information collected by—

(1) the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 and following);

(2) the Bureau of the Census on industry, manufacturing, research and development, and trade, under title 13;

(3) the Bureau of Labor Statistics pertaining to information collected under the International Investment and Trade in Services Survey Act, but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(4) the Secretary of Commerce or the Secretary’s designee pursuant to section 2¹ of Executive Order 11858 of May 7, 1975;

(5) the United States Department of Agriculture under the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 and following);

(6) the Department of the Treasury under section 6039C of title 26, but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(7) the Department of Energy under section 7267(8) of title 42, but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(8) other Federal agencies not referred to in paragraphs (1) through (7), but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

¹ See References in Text note below.

(9) foreign governments and agencies thereof; and

(10) private sector sources.

(c) Analyses

(1) The analysis in each report prepared under subsection (a) shall, to the extent of available data, compare business enterprises controlled by foreign persons with other business enterprises in the United States with respect to employment, market share, value added, productivity, research and development, exports, imports, profitability, taxes paid, and investment incentives and services provided by State and local governments (including quasi-governmental entities).

(2) Each such analysis shall be done by significant industry sectors and geographical regions, except that information shall not be presented in a way in which any person, including any business enterprise or establishment, can be identified. The restriction contained in the preceding sentence on presentation of information does not apply to information that is obtained from foreign governments or agencies thereof and that has been published pursuant to the lawful disclosure of the information. To the extent that data are available, each such analysis shall include an analysis, together with current levels and trends, of the number and market share of business enterprises at least 10 percent of the voting securities or other evidences of ownership of which are owned or controlled by a foreign person, and of the number and market share of the establishments of such business enterprises, that are engaged substantially in the production or coproduction of any critical technologies identified in the most recent assessment prepared under section 2505 of title 10 or included in the most recent report submitted to the President under section 6683¹ of title 42.

(Pub. L. 101-533, § 3, Nov. 7, 1990, 104 Stat. 2344; Pub. L. 102-484, div. A, title X, § 1054(f), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103-160, div. A, title XI, § 1182(d)(2), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 105-261, div. A, title X, § 1069(d)(2), Oct. 17, 1998, 112 Stat. 2136.)

REFERENCES IN TEXT

The International Investment and Trade in Services Survey Act, referred to in subsec. (b)(1), (3), is Pub. L. 94-472, Oct. 11, 1976, 90 Stat. 2059, as amended, which is classified generally to chapter 46 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

Executive Order 11858, referred to in subsec. (b)(4), is set out as a note under section 4565 of Title 50, War and National Defense. Ex. Ord. No. 11858 was amended generally by Ex. Ord. No. 13456, § 1, Jan. 23, 2008, 73 F.R. 4677, and, as so amended, section 2 no longer relates to the collection of information on foreign investment. However, similar provisions are now contained in section 9 of Ex. Ord. No. 11858.

The Agricultural Foreign Investment Disclosure Act of 1978, referred to in subsec. (b)(5), is Pub. L. 95-460, Oct. 14, 1978, 92 Stat. 1263, which is classified generally to chapter 66 (§ 3501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of Title 7 and Tables.

Section 6683 of title 42, referred to in subsec. (c)(2), was omitted from the Code.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-261 substituted “identified in the most recent assessment prepared under section 2505 of title 10” for “included in the most recent plan submitted to the Congress under section 2506 of title 10”.

1993—Subsec. (c)(2). Pub. L. 103-160 substituted “section 2506” for “section 2522”.

1992—Subsec. (c)(2). Pub. L. 102-484 substituted “section 2522” for “section 2368”.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 3143. Reports by Government Accountability Office

(a) In general

The Comptroller General, to the extent permitted by law, including section 3144 of this title, is authorized to review the information described in section 3142(b) of this title for purposes of preparing the reports referred to in subsection (b) of this section. Nothing in this section authorizes disclosure of any individually identifiable data or information in any form that can be associated with or otherwise identify, directly or indirectly, any person, including any enterprise or establishment.

(b) Reports

Consistent with the provisions of this section, the Comptroller General may submit to the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives, to the Committee on Commerce, Science, and Transportation of the Senate, and to the Joint Economic Committee of the Congress reports—

(1) analyzing reports issued by the Secretary of Commerce under section 3142 of this title;

(2) making recommendations for changes in the analysis done in the report due the following year under section 3142 of this title;

(3) making recommendations for improving the collection by respective Federal agencies of data on foreign direct investment in the United States, including use of private sector data, and improving survey questionnaires to obtain useful and consistent information that avoids unnecessary redundancy among Federal agencies;

(4) reviewing the status and processes for reconciliation of data exchanged as required by this Act and the amendments made by this Act, and making any recommendations for improving and augmenting international financial data;

(5) making recommendations for possible additional policy coordination within the executive branch affecting foreign direct investment in the United States; and