

hereinafter referred to as the Act, are hereby delegated to the Director of the Office of Management and Budget, hereinafter referred to as the Director. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

SEC. 2. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to portfolio investment, shall perform the functions set forth in sections 4(a)(1), (2), (5) and 4(c) of the Act [22 U.S.C. 3103(a)(1), (2), (5) and (c)].

SEC. 3. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce, with respect to direct investment and trade in services, shall perform the functions set forth in sections 4(a)(1), (2), (4), (5) and 4(b) of the Act [22 U.S.C. 3103(a)(1), (2), (4), (5) and (b)].

SEC. 4. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce shall perform the function of making periodic reports to the Committees of the Congress as set forth in Section 4(a)(3) of the Act [22 U.S.C. 3103(a)(3)].

§ 3102. Definitions

As used in this chapter, the term—

(1) “United States”, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and all territories and possessions of the United States;

(2) “foreign”, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(3) “person” means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency);

(4) “United States person” means any person resident in the United States or subject to the jurisdiction of the United States;

(5) “foreign person” means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(6) “business enterprise” means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(7) “parent” means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(8) “affiliate” means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated

business or an equivalent interest for an unincorporated business, including a branch;

(9) “international investment” means (A) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (B) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person;

(10) “direct investment” means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise; and

(11) “portfolio investment” means any international investment which is not direct investment.

(Pub. L. 94-472, §3, Oct. 11, 1976, 90 Stat. 2060.)

Editorial Notes

REFERENCES IN TEXT

For definition of Canal Zone, referred to in par. (1), see section 3602(b) of this title.

§ 3103. Presidential authority and duties

(a) Data collection program; studies and surveys; periodic report to Congressional committees; statistical information publication

The President shall, to the extent he deems necessary and feasible—

(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States;

(2) conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services which may have significant implications for the economic welfare and national security of the United States;

(3) study the adequacy of information, disclosure, and reporting requirements and procedures relating to international investment and trade in services; recommend necessary improvements in information recording, collection, and retrieval and in statistical analysis and presentation; and report periodically to the Committees on Finance¹ Foreign Relations¹ and Commerce of the Senate and the Committees on Ways and Means, Energy and Commerce, and Foreign Affairs of the House of Representatives on national and international

¹ So in original. Probably should be followed by a comma.

developments with respect to laws and regulations affecting international investment and trade in services;

(4) conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and

(5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection and to the benchmark surveys conducted pursuant to subsections (b) and (c), including, with respect to foreign direct investment in the United States, information on ownership by foreign governments of United States affiliates by country, and tables, on an aggregated basis, of business enterprises the ownership or control of which by foreign persons is more than 50 percent of the voting securities or other evidences of ownership of such enterprises, and business enterprises the ownership or control of which by foreign persons is 50 percent or less of the voting securities or other evidences of ownership of such enterprises.

(b) Benchmark survey of United States direct investment abroad and foreign direct investment in United States

With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter. With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade (including trade in both goods and services) between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and

(5) determine, by industry and country, the total dollar amount of research and develop-

ment expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

(c) Benchmark survey of foreign portfolio investment in United States and United States portfolio investment abroad; report to Congress

(1) The President shall conduct a comprehensive benchmark survey of foreign portfolio investment in the United States at least once every five years and, for such purposes, shall (among other things and to the extent he determines necessary and feasible) determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of foreign private holders, diversification of holdings by economic sector, and holders of record.

(2) In addition to the benchmark surveys conducted pursuant to paragraph (1), the President shall annually compile currently available data on United States portfolio investment abroad including items such as data on the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of private holders, diversification of holdings by economic sector, and holders of record. The President shall submit an analysis of such data to the Congress not later than the first day of July of each year.

(d) Foreign agricultural and real property investment and land data system: study; submission of findings and conclusions to Congress

The President shall conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system, and shall submit his findings and conclusions to the Congress not later than two years after October 11, 1976.

(e) Report on cost of monitoring and compiling data on legislation enacted by foreign nations regulating and restricting foreign inward investment

The Secretary of Commerce shall prepare a report on the estimated cost of monitoring and compiling data on legislation enacted by the major trading partners of the United States, and such other foreign nations as the Secretary deems appropriate, which regulates or restricts foreign inward investment in such foreign nations.

(f) Reporting, recordkeeping, and documentation

Activities shall be conducted so that information obtained pursuant to this chapter shall be timely and useful in the development of policy with respect to international investment and trade in services. Reporting and recordkeeping requirements imposed under this chapter shall be designed in order to minimize costs to the ex-

tent feasible, consistent with effective enforcement and the compilation of information required by this chapter. Reporting, record-keeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(g) Costs for collecting information

In collecting information under this chapter, the President shall give due regard to the costs incurred by persons supplying such information, as well as to the costs incurred by the Government, and shall insure that the information collected is only in such detail as is necessary to fulfill the stated purposes for which the information is being gathered.

(h) Bureau of Economic Analysis report

(1) The President, or the designee of the President responsible for monitoring the impact of foreign investment in the United States, coordinating implementation of United States policy on investment, and investigating foreign acquisitions under section 4565 of title 50, may request a report from the Bureau of Economic Analysis of the Department of Commerce. When such request is made in connection with an investigation under such section 4565, the report shall be provided within 14 days after the request is made. When such request is not made in connection with an investigation under such section 4565, the report shall be provided within 60 days after the request.

(2) A report requested under paragraph (1) shall contain the best available information on the extent of foreign direct investment in a given industry, including a breakdown of total investment in the industry, and any foreign government investment in the industry, by country of the foreign owner, and any other information that the Bureau of Economic Analysis or such designee of the President considers relevant. The industry information provided shall be at the most detailed level available of Standard Industrial Classification, subject to the requirements of section 3104 of this title.

(Pub. L. 94-472, §4, Oct. 11, 1976, 90 Stat. 2060; Pub. L. 95-381, §2, Sept. 22, 1978, 92 Stat. 726; H. Res. 89, Feb. 5, 1979; Pub. L. 97-33, §§1-3, Aug. 7, 1981, 95 Stat. 170; Pub. L. 97-70, Oct. 26, 1981, 95 Stat. 1045; Pub. L. 98-573, title III, §306(b)(3), (4), Oct. 30, 1984, 98 Stat. 3010; Pub. L. 101-533, §6(b), (c), Nov. 7, 1990, 104 Stat. 2348.)

Editorial Notes

AMENDMENTS

1990—Subsec. (a)(5). Pub. L. 101-533, §6(b), inserted before period at end “, including, with respect to foreign direct investment in the United States, information on ownership by foreign governments of United States affiliates by country, and tables, on an aggregated basis, of business enterprises the ownership or control of which by foreign persons is more than 50 percent of the voting securities or other evidences of ownership of such enterprises, and business enterprises the ownership or control of which by foreign persons is 50 percent or less of the voting securities or other evidences of ownership of such enterprises”.

Subsec. (h). Pub. L. 101-533, §6(c), added subsec. (h).
1984—Subsec. (a)(1), (2). Pub. L. 98-573, §306(b)(4)(A)(ii), inserted “and trade in services” after “international investment” wherever appearing.

Subsec. (a)(3). Pub. L. 98-573, §306(b)(3), (4)(A)(i)-(iii), inserted reference to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and substituted “presentation” for “presentation relating to international investment”, inserted “and trade in services” after “international investment” in two places, and struck out “and” at end.

Subsec. (a)(4), (5). Pub. L. 98-573, §306(b)(4)(A)(iv), (v), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(2)(C). Pub. L. 98-573, §306(b)(4)(B), inserted “(including trade in both goods and services)” after “regarding trade”.

Subsec. (f). Pub. L. 98-573, §306(b)(4)(C), inserted “and trade in services” after “international investment”.

1981—Subsec. (b). Pub. L. 97-70 substituted “year” for “calendar year” in five places in provisions preceding par. (1).

Pub. L. 97-33, §1, substituted “With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering calendar year 1980, a benchmark survey covering calendar year 1987, and benchmark surveys covering every fifth calendar year thereafter. With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering calendar year 1982, a benchmark survey covering calendar year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall,” for “With respect to the United States direct investment abroad and foreign direct investment in the United States, the President shall conduct a comprehensive benchmark survey at least once every five years and, for such purpose, shall,” in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 97-33, §2, substituted “the President shall annually compile currently available data on United States portfolio investment abroad including items such as data on the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of private holders, diversification of holdings by economic sector, and holders of record. The President shall submit an analysis of such data to the Congress not later than the first day of July of each year” for “the President shall conduct a benchmark survey of United States portfolio investment abroad and, for such purpose, shall (among other things and to the extent he determines necessary and feasible) determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of private holders, diversification of holdings by economic sector, and holders of record. The President shall complete such survey not later than the end of the five-year period beginning on October 11, 1976. After completion of such survey, the President shall report to the Congress on the feasibility and desirability of conducting, on a periodic basis, additional benchmark surveys of United States portfolio investment abroad. If he determines that such additional benchmark surveys are feasible and desirable, he may conduct such surveys”.

Subsecs. (e) to (g). Pub. L. 97-33, §3, added subsec. (e) and redesignated subsecs. (e) and (f) as (f) and (g), respectively.

1979—Subsec. (a)(3). H. Res. 89 changed name of Committee on International Relations of the House of Representatives to Committee on Foreign Affairs.

1978—Subsec. (d). Pub. L. 95-381 substituted provisions setting forth requirements respecting interim and final reports to Congress, for provisions requiring submission of findings and conclusions to Congress not later than two years after Oct. 11, 1976.

Statutory Notes and Related Subsidiaries

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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to submitting an analysis of compiled data to Congress each year, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 30 of House Document No. 103-7.

§ 3104. Rules and regulations

(a) Authorization

The authorities and responsibilities under this chapter may be exercised through such rules and regulations as may be necessary to carry out the purposes of this chapter.

(b) Recordkeeping and reports

Rules or regulations issued pursuant to this chapter may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential to carrying out the surveys and studies to be conducted under this chapter; and

(2) to furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies conducted under this chapter.

When a report under paragraph (2) is furnished under oath, such oath shall be by the officer of such person who is directly responsible for the maintenance and compilation of such information, and shall certify that the report was prepared in accordance with this chapter, is complete, and is to such officer's best knowledge and belief, substantially accurate, except in a case in which, in accordance with rules and regulations issued under this chapter, estimates have been provided because data are not available from customary accounting records or precise data could not be obtained without undue burden, and the data subject to such estimates has been noted in the report.

(c) Access to information; limitation

Access to information obtained under subsection (b)(2) of this section shall be available only to officials or employees designated to perform functions under this chapter, including consultants and persons working on contracts awarded pursuant to this chapter. Subject to the limitation of paragraph (1) of this subsection, the President may authorize the exchange between agencies or officials designated by him of information furnished by any person under this chapter as he deems necessary to carry out the purposes of this chapter. Nothing in this section shall be construed to require any Federal agency to disclose to any official exercising authority

under this chapter any information or report collected under legal authority other than this chapter where disclosure is prohibited by law. Information collected pursuant to subsection (b)(2) may be used only—

(1) for analytical or statistical purposes within the United States Government; or

(2) for the purpose of a proceeding under subsection (e) of this section or under section 3105(b) or (c) of this title.

No official or employee designated to perform functions under this chapter, including consultants and persons working on contracts awarded pursuant to this chapter, may publish or make available to any other person any information collected pursuant to subsection (b)(2) in a manner that the person who furnished the information can be specifically identified except as provided in this section. No person can compel the submission or disclosure of any report or constituent part thereof collected pursuant to this chapter, or any copy of such report or constituent part thereof, without the prior written consent of the person who maintained or furnished such report under subsection (b) and without prior written consent of the customer, where the person who maintained or furnished such report included information identifiable as being derived from the records of such customer.

(d) Access to Bureau of Economic Analysis information

The Bureau of the Census of the Department of Commerce is authorized, for purposes of augmenting and improving the quality of data collected by the Bureau of the Census, to have, upon written request, access to data relating to business enterprises that is collected directly by the Bureau of Economic Analysis for purposes of this chapter. The Bureau of Labor Statistics of the Department of Labor is authorized, for purposes of augmenting and improving the data collected by the Bureau of Labor Statistics, to have access, upon written request, to selected identification information on business enterprises and data on international services transactions, that is collected directly by the Bureau of Economic Analysis for purposes of this chapter. Officers and employees of the Bureau of the Census and the Bureau of Labor Statistics shall, for purposes of subsection (c), be deemed to be officials or employees designated to perform functions under this chapter.

(e) Penalty

Any person who willfully violates subsection (c) or (d) shall, upon conviction, be fined not more than \$10,000, in addition to any other penalty imposed by law.

(Pub. L. 94-472, § 5, Oct. 11, 1976, 90 Stat. 2062; Pub. L. 98-573, title III, § 306(b)(5), Oct. 30, 1984, 98 Stat. 3010; Pub. L. 101-533, §§ 6(d), (e), 7(a), Nov. 7, 1990, 104 Stat. 2349.)

Editorial Notes

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-533, § 7(a), inserted at end “When a report under paragraph (2) is furnished under oath, such oath shall be by the officer of such person who is directly responsible for the maintenance