

115TH CONGRESS
1ST SESSION

S. 1722

To require the Committee on Foreign Investment in the United States to consider the reciprocity of foreign investment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2017

Mr. SULLIVAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the Committee on Foreign Investment in the United States to consider the reciprocity of foreign investment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “True Reciprocity In-
5 vestment Act of 2017”.

6 **SEC. 2. CONSIDERATION OF RECIPROCITY OF FOREIGN IN-**
7 **VESTMENT.**

8 Section 721 of the Defense Production Act of 1950
9 (50 U.S.C. 4565) is amended by adding at the end the
10 following:

1 “(o) CONSIDERATION OF RECIPROCITY OF FOREIGN
2 INVESTMENT.—

3 “(1) REPORT REQUIRED.—Not later than 30
4 days after the date of the enactment of the True
5 Reciprocity Investment Act of 2017, and annually
6 thereafter, the United States Trade Representative
7 shall, in consultation with the Secretary of Com-
8 merce and the Secretary of the Treasury, submit to
9 the appropriate congressional committees a report
10 assessing the extent to which the governments of
11 foreign countries allow investments by United States
12 persons in those countries that are similar to invest-
13 ments in the United States made by entities orga-
14 nized under the laws of those countries.

15 “(2) ELEMENTS.—The report required by para-
16 graph (1) shall include, with respect to each country
17 that is a major trading partner of the United States,
18 the following:

19 “(A) A description of the laws, policies,
20 and practices of the country with respect to for-
21 eign investment.

22 “(B) A comparison of such laws, policies,
23 and practices with the laws, policies, and prac-
24 tices of the United States with respect to for-
25 eign investment.

1 “(C) An assessment of laws, policies, and
2 practices by the government of the country that
3 prohibit, restrict, or delay investment in the
4 country by United States persons.

5 “(D) An identification of which such laws,
6 policies, and practices have had the most sig-
7 nificant effect on investment in that country by
8 United States persons.

9 “(E) An identification of the industries in
10 the United States that have been most severely
11 affected by such laws, policies, and practices.

12 “(F) An assessment of the transparency of
13 the process for making such laws, policies, and
14 practices.

15 “(G) If a bilateral investment treaty is in
16 effect between the United States and the coun-
17 try, an assessment of the extent to which the
18 government of the country has complied with its
19 obligations under the treaty.

20 “(H) Recommendations with respect to
21 what remedies may be available to facilitate in-
22 vestment in the country by United States per-
23 sons.

24 “(I) An assessment of the amount of
25 greenfield investment in the United States by

1 persons organized under the laws of or other-
 2 wise subject to the jurisdiction of the country.

3 “(3) DETERMINATIONS.—The report required
 4 by paragraph (1) shall include the determination of
 5 the Trade Representative, after consideration of the
 6 elements described in paragraph (2), of whether
 7 each country that is a major trading partner of the
 8 United States—

9 “(A) has high barriers to investment by
 10 United States persons (to be known as a ‘high
 11 barrier country’);

12 “(B) has recently taken measures that con-
 13 stitute barriers to investment by United States
 14 persons or has indicated an intention to take
 15 such measures (to be known as a ‘watch coun-
 16 try’); or

17 “(C) has investment laws, policies, and
 18 practices that should be monitored (to be
 19 known as a ‘monitor country’).

20 “(4) JUSTIFICATION FOR TRANSACTIONS WITH
 21 HIGH BARRIER COUNTRIES.—

22 “(A) IN GENERAL.—If the Committee rec-
 23 ommends that the President not suspend or
 24 prohibit under subsection (d) a covered trans-
 25 action described in subparagraph (B), the Com-

mittee shall include in the report required by paragraph (1) an explanation of the reasons for recommending that the President not suspend or prohibit that transaction.

“(B) COVERED TRANSACTION DESCRIBED.—A covered transaction is described in this subparagraph if a party to the transaction is organized under the laws of or otherwise subject to the jurisdiction of a high barrier country.

“(5) DEFINITIONS.—In this subsection:

“(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(i) the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on Foreign Relations, and the Committee on Commerce, Science, and Transportation of the Senate; and

“(ii) the Committee on Financial Service, the Committee on Ways and Means, the Committee on Foreign Affairs, and the Committee on Energy and Commerce of the House of Representatives.

“(B) GREENFIELD INVESTMENT.—The term ‘greenfield investment’ means an investment by a foreign person in the United States under which the foreign person builds operations and facilities in the United States instead of purchasing or leasing existing facilities.

“(C) UNITED STATES PERSON.—The term ‘United States person’ means—

“(i) a United States citizen or an alien lawfully admitted for permanent residence to the United States; or

“(ii) an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity.”.

SEC. 3. CONSIDERATION OF REPORT ON RECIPROCITY.

Section 721(f) of the Defense Production Act of 1950 (50 U.S.C. 4565(f)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (A), by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II), and (III), respectively, and by moving such subclauses, as so redesignated, 2 ems to the right; and

1 (B) by redesignating subparagraphs (A),
 2 (B), and (C) as clauses (i), (ii), and (iii), re-
 3 spectively, and by moving such clauses, as so
 4 redesignated, 2 ems to the right;

5 (2) in paragraph (9), by redesignating subpara-
 6 graphs (A), (B), and (C) as clauses (i), (ii), and
 7 (iii), respectively, and by moving such clauses, as so
 8 redesignated, 2 ems to the right;

9 (3) by redesignating paragraphs (1) through
 10 (11) as subparagraphs (A) through (K), respectively,
 11 and by moving such subparagraphs, as so redesign-
 12 ated, 2 ems to the right;

13 (4) in the matter preceding subparagraph (A),
 14 as redesignated by paragraph (3), by striking “may,
 15 taking into account the requirements of national se-
 16 curity, consider—” and inserting the following: “,
 17 taking into account the requirements of national se-
 18 curity—

19 “(1) may consider—”;

20 (5) in subparagraph (K), as redesignated by
 21 paragraph (3), by striking the period at the end and
 22 inserting “; and”; and

23 (6) by adding at the end the following:

24 “(2) shall consider the findings in the most re-
 25 cent report required by subsection (o) with respect

- 1 to any foreign country with jurisdiction over a party
- 2 to the proposed or pending transaction.”.

