

Public Law 101-533
101st Congress

An Act

Nov. 7, 1990
[S. 2516]

Foreign Direct
Investment and
International
Financial Data
Improvements
Act of 1990.
Business and
industry.
22 USC 3141
note.
22 USC 3141.

To augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Foreign Direct Investment and International Financial Data Improvements Act of 1990".

SEC. 2. 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 2(b) and 5(c) of the International Investment and Trade in Services Survey Act, 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 General Accounting Office may have limited access to Government data on foreign direct investment.

22 USC 3142.

SEC. 3. REPORT BY SECRETARY OF COMMERCE.

(a) ANNUAL REPORT ON FOREIGN DIRECT INVESTMENT IN THE UNITED STATES.—Not later than 6 months after the date of the enactment of this Act, 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, United States Code;

(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 2 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 the Internal Revenue Code of 1986 (26 U.S.C. 6039C), 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 657(8) of the Department of Energy Organization Act (42 U.S.C. 7267(8)), 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;

(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 con-

tained 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 included in the most recent plan submitted to the Congress under section 2368 of title 10, United States Code, or included in the most recent report submitted to the President under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976.

22 USC 3143.

SEC. 4. REPORTS BY GENERAL ACCOUNTING OFFICE.

(a) **IN GENERAL.**—The Comptroller General, to the extent permitted by law, including section 8 of this Act, is authorized to review the information described in section 3(b) for purposes of preparing the report required under 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) **REPORT.**—Not later than 5 months after each report issued by the Secretary of Commerce under section 3, the Comptroller General of the United States 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—

- (1) analyzing the report of the Secretary of Commerce;
- (2) making recommendations for changes in the analysis done in the report due the following year under section 3;
- (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
- (6) making recommendations for improvement of the coverage, industry classification, and consistency among Federal agencies of their respective surveys.

Reports under this subsection shall be issued only with respect to the first 3 reports issued by the Secretary of Commerce under section 3.

(c) **OTHER REVIEWS AND REPORTS.**—(1) The Comptroller General may, to the extent permitted by law, including section 5(c) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3104(c)) and section 8 of this Act, also review data and information at the Bureau of the Census, the Bureau of Labor Statistics, and the Bureau of Economic Analysis and from time to time report to the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and to the Joint Economic Committee of the Congress.

(2) The Comptroller General shall, in carrying out paragraph (1), comply with procedures relating to access to and disclosure of data and information established within the Federal statistical agencies referred to in paragraph (1), and maintain any and all individually identifiable data and information at the statistical agency where the information is reviewed.

(d) **CONFIDENTIALITY; REVIEW BY OTHER AGENCIES.**—In preparing any report under this section, the Comptroller General shall not—

(1) disclose any confidential business information or present any information in a way in which any person, including a business enterprise or establishment, can be identified; or

(2) combine, match, or use in any other way individually identifiable data or information maintained by any of the Federal statistical agencies referred to in subsection (c) with any other individually identifiable confidential data or information that is not collected by such statistical agencies.

Before issuing any such report, the Comptroller General shall in each instance submit the report to the head or heads of the agency or agencies from which confidential or identifiable information described in the preceding sentence was obtained. The agency or agencies concerned shall promptly review the report for the purpose of assuring that the confidentiality of such information and identity is maintained, and for any other purpose, and shall provide the Comptroller General with appropriate comments or other suggestions within 10 working days after receiving the report.

(e) **RIGHT OF ACCESS.**—The access by the Comptroller General to information under this Act shall be in conformity with section 716 of title 31, United States Code.

SEC. 5. ACCESS TO CENSUS DATA BY BUREAU OF ECONOMIC ANALYSIS.

(a) **ACCESS TO DATA.**—Title 13, United States Code, is amended by adding at the end the following:

“CHAPTER 10—EXCHANGE OF CENSUS INFORMATION

“Sec.

“401. Exchange of census information with Bureau of Economic Analysis.

“§ 401. Exchange of census information with Bureau of Economic Analysis.

“(a) **EXCHANGE OF INFORMATION.**—The Bureau of the Census shall exchange with the Bureau of Economic Analysis of the Department of Commerce information collected under this title, and under the International Investment and Trade in Services Survey Act, that pertains to any business enterprise that is operating in the United

States, if the Secretary of Commerce determines such information is appropriate to augment and improve the quality of data collected under the International Investment and Trade in Services Survey Act. Information provided to the Bureau of Economic Analysis by the Bureau of the Census shall be only those data collected directly from respondents by the Bureau of the Census.

“(b) REQUESTS FOR INFORMATION.—The Director of the Bureau requesting information under this section shall make the request in writing and shall certify that the information will be used only for statistical activities performed to improve the quality of data collected under the authority of title 13, United States Code, and the International Investment and Trade in Services Survey Act.

“(c) DEFINITION.—As used in subsection (a), the terms ‘business enterprise’ and ‘United States’ have the meanings given those terms in section 3 of the International Investment and Trade in Services Survey Act.”

(b) CONFORMING AMENDMENTS.—(1) The table of chapters at the beginning of title 13, United States Code, is amended by adding at the end the following:

“10. Exchange of census information 401”.

(2) Section 9(a) of title 13, United States Code, is amended by inserting after “section 8” the following: “or chapter 10”.

SEC. 6. AMENDMENTS TO THE INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT.

(A) PURPOSE.—Section 2(b) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101(b)) is amended by inserting after “the impact of such investment and trade,” in the first sentence the following: “to authorize the collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments or persons,”.

(b) REPORTING REQUIREMENT.—Section 4(a)(5) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3103(a)(5)) is amended by inserting before the period the following: “, 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”.

(c) BUREAU OF ECONOMIC ANALYSIS REPORT.—Section 4 of the International Investment and Trade in Services Survey Act (22 U.S.C. 3103) is amended by adding at the end the following new subsection:

“(h)(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 721 of the Defense Production Act of 1950 (50 App. U.S.C. 2170), 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 721, 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 721, 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 5."

(d) ACCESS TO INFORMATION.—Section 5 of the International Investment and Trade in Services Survey Act (22 U.S.C. 3104) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) 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 Act. 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 Act. 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 Act."

(e) CONFORMING AMENDMENTS.—Section 5 of the International Investment and Trade in Services Survey Act is amended—

(1) in subsection (c)(2) by striking "(d)" and inserting "(e)"; and

(2) in subsection (e), as redesignated by subsection (d)(1) of this section, by inserting "or (d)" after "(c)".

SEC. 7. ACCOUNTABILITY FOR TIMELY REPORTING.

(a) AFFIRMATION BY A RESPONSIBLE OFFICER.—Section 5(b) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3104(b)) is amended by adding at the end the following: "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 Act, 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 Act, 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."

(b) CIVIL PENALTIES.—Section 6(a) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3105(a)) is amended by striking "may be subject to a civil penalty not exceeding \$10,000" and inserting "shall be subject to a civil penalty of not less than \$2,500, and not more than \$25,000,".

22 USC 3144.

SEC. 8. ACCESS TO INFORMATION; CONFIDENTIALITY.

(a) **CONFIDENTIALITY.**—(1) Those officers and employees who have access to information under this Act to which the provisions of section 9 of title 13, United States Code, apply must have been sworn, as provided for in section 23(c) of such title, to observe the limitations imposed by section 9(a) of such title and to be subject to the provisions of section 214 of such title to the same extent as such section applies to officers or employees of the Bureau of the Census.

(2) Only those officers and employees who have sworn to observe the provisions of section 5(c) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3104(c)) may have access under this Act to information to which such provisions apply, and such officers and employees are subject to the penalties for improper disclosure of such information provided in section 5(e) of that Act to the same extent as such section applies to officers or employees designated to perform functions under that Act.

(3) Those officers and employees referred to in paragraphs (1) and (2) of this section shall be subject to any other restriction or penalty imposed by law with respect to disclosure of information to which such officers or employees have access under this Act.

(b) **VIOLATIONS AND PENALTIES.**—Whoever is in possession of information made available to any department or agency by virtue of this Act or the amendments made by this Act and discloses the information in any form which can be associated with, or otherwise identify, any person, including any business enterprise or establishment, shall be fined not less than \$2,500 nor more than \$25,000 or imprisoned not more than 5 years, or both.

(c) **UNLAWFUL ACCESS.**—Whoever procures, by fraud, misrepresentation, or other unlawful act, access to information made available to any department or agency by virtue of this Act or the amendments made by this Act shall be fined not less than \$2,500 nor more than \$25,000 or imprisoned not more than 5 years, or both.

(d) **INFORMATION IMMUNE FROM PROCESS.**—Information obtained under this Act shall be immune from legal process and shall not be used as evidence or for any purpose in any Federal, State, or local government action, suit, or other administrative or judicial proceeding except as necessary to enforce requirements imposed by law on the collection of information, to enforce the provisions of subsections (b) and (c).

(e) **IMPLEMENTATION.**—(1) The Secretary of Commerce shall be responsible for the implementation of the exchange of information under this Act between the Bureau of the Census and the Bureau of Economic Analysis, and shall resolve any questions on access to information, data, or methodology that may arise between the Bureau of the Census and the Bureau of Economic Analysis, except that the Secretary shall not construe this section in a manner which would prevent the augmentation and improvement of the quality of international data collected under the International Investment and Trade in Services Survey Act. The Bureau of Economic Analysis and the Bureau of the Census shall agree in writing to the data to be shared under this Act.

(2) The Director of the Office of Management and Budget shall be responsible for the implementation of the exchange of information under this Act between the Bureau of Economic Analysis and the Bureau of Labor Statistics, and shall resolve any questions on access to information, data, or methodology that may arise between the

Bureau of Economic Analysis and the Bureau of Labor Statistics, except that the Director shall not construe this section in a manner which would prevent the augmentation and improvement of the quality of international data collected under the International Investment and Trade in Services Survey Act.

SEC. 9. CONSTRUCTION OF THE ACT.

22 USC 3145.

(a) **IN GENERAL.**—Nothing in this Act or the amendments made by this Act shall be construed to require any business enterprise or any of its officers, directors, shareholders, or employees, or any other person, to provide information beyond that which is required before the enactment of this Act.

(b) **IMPLEMENTATION.**—All departments and agencies implementing this Act and the amendments made by this Act shall, with respect to surveys or questionnaires used in such implementation—

(1) eliminate questions that are no longer necessary,

(2) cooperate with one another in order to ensure that questions asked are consistent among the departments and agencies, and

(3) develop new questions in order to obtain more refined statistics and analyses,

consistent with the purposes of the provisions of law amended by this Act and the Paperwork Reduction Act of 1980.

SEC. 10. DEFINITIONS.

22 USC 3146.

For purposes of this Act—

(1) the terms “foreign”, “direct investment”, “international investment”, “United States”, “business enterprise”, “foreign person”, and “United States person” have the meanings given those terms in section 3 of the International Investment and Trade in Services Survey Act (22 U.S.C. 3102); and

(2) the term “foreign direct investment in the United States” means direct investment by foreign persons in any business enterprise that is a United States person.

Approved November 7, 1990.

LEGISLATIVE HISTORY—S. 2516 (H.R. 4520):

HOUSE REPORTS: No. 101-855, Pt. 1 (Comm. on Foreign Affairs) and Pt. 2 (Comm. on Energy and Commerce), both accompanying H.R. 4520.

SENATE REPORTS: No. 101-443 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 136 (1990):

Oct. 18, considered and passed Senate.

Oct. 23, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):

Nov. 7, Presidential statement.