

US Code

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TITLE 22 - FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 46A—FOREIGN DIRECT INVESTMENT AND INTERNATIONAL FINANCIAL DATA

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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

Section 1 of Pub. L. 101–533 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’.”

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§ 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) of this section, 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;
- (9) foreign governments and agencies thereof; and
- (10) private sector sources.

(c) Analyses

- (1) The analysis in each report prepared under subsection (a) of this section 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.

Footnotes

¹ See References in Text note below.

(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 2170 of the Appendix to 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.

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§ 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
 - (6) making recommendations for improvement of the coverage, industry classification, and consistency among Federal agencies of their respective surveys.
- (c) **Other reviews and reports**

(1) The Comptroller General may, to the extent permitted by law, including section 3104 (c) of this title and section 3144 of this title, 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) of this section 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.

References in Text

This Act and the amendments made by this Act, referred to in subsecs. (b)(4) and (e), is Pub. L. 101–533, Nov. 7, 1990, 104 Stat. 2344, known as the Foreign Direct Investment and International Financial Data Improvements Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3141 of this title and Tables.

Amendments

2004—Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office” in section catchline.

1996—Subsec. (a). Pub. L. 104–316, § 111(c)(1), substituted “reports referred to in” for “report required under”.

Subsec. (b). Pub. L. 104–316, § 111(c)(2)(A), (D), substituted “Reports” for “Report” in heading, in introductory provisions substituted “Consistent with the provisions of this section, the Comptroller General may submit” for “Not later than 5 months after each report issued by the Secretary of Commerce under section 3142 of this title, the Comptroller General of the United States shall submit”, and struck out closing provisions which read as follows: “Reports under this subsection shall be issued only with respect to the first 3 reports issued by the Secretary of Commerce under section 3142 of this title.”

Pub. L. 104–316, § 111(c)(2)(B), which directed that subsec. (b) be amended by substituting “Congress reports” for “Congress, a report”, was executed in the introductory provisions by making the substitution for “Congress a report”, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 104–316, § 111(c)(2)(C), substituted “reports issued by the Secretary of Commerce under section 3142 of this title” for “the report of the Secretary of Commerce”.

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.

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§ 3144. 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 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 [22 U.S.C. 3104 (e)] to the same extent as such section applies to officers or employees designated to perform functions under that Act [22 U.S.C. 3101 et seq.].

(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.

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(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) of this section.

(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 [22 U.S.C. 3101 et seq.]. 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 [22 U.S.C. 3101 et seq.].

(Pub. L. 101-533, § 8, Nov. 7, 1990, 104 Stat. 2350.)

References in Text

This Act or the amendments made by this Act, referred to in text, is Pub. L. 101-533, Nov. 7, 1990, 104 Stat. 2344, known as the Foreign Direct Investment and International Financial Data Improvements Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3141 of this title and Tables.

The International Investment and Trade in Services Survey Act, referred to in subsecs. (a)(2) and (e), 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.

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§ 3145. Construction of foreign direct investment and international financial data provisions

(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 November 7, 1990.

(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,

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- (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 1980.¹

Footnotes

¹ See References in Text note below.

(Pub. L. 101–533, § 9, Nov. 7, 1990, 104 Stat. 2351.)

References in Text

This Act or the amendments made by this Act, referred to in text, is Pub. L. 101–533, Nov. 7, 1990, 104 Stat. 2344, known as the Foreign Direct Investment and International Financial Data Improvements Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3141 of this title and Tables.

The Paperwork Reduction Act of 1980, referred to in subsec. (b), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

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§ 3146. Definitions

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 3102 of this title; 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.

(Pub. L. 101–533, § 10, Nov. 7, 1990, 104 Stat. 2351.)

References in Text

This Act, referred to in text, is Pub. L. 101–533, Nov. 7, 1990, 104 Stat. 2344, known as the Foreign Direct Investment and International Financial Data Improvements Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3141 of this title and Tables.