

115TH CONGRESS
1ST SESSION

S. _____

To establish a process to review foreign investment to determine the economic effect of the investment on the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BROWN (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To establish a process to review foreign investment to determine the economic effect of the investment on the United States, 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 “United States Foreign
5 Investment Review Act of 2017”.

1 **SEC. 2. AUTHORITY TO REVIEW TRANSACTIONS FOR ECO-**
2 **NOMIC EFFECT ON THE UNITED STATES.**

3 (a) IN GENERAL.—The Trade Act of 1974 (19
4 U.S.C. 2102 et seq.) is amended by adding at the end
5 the following:

6 **“TITLE X—AUTHORITY TO RE-**
7 **VIEW TRANSACTIONS FOR**
8 **ECONOMIC EFFECT ON THE**
9 **UNITED STATES**

10 **“SEC. 1001. DEFINITIONS.**

11 “In this title:

12 “(1) CONTROL.—The term ‘control’ means the
13 power, whether direct or indirect and whether or not
14 exercised, through the ownership of a majority or a
15 dominant minority of the total outstanding voting
16 interest in an entity, representation on the board of
17 directors of an entity, proxy voting on the board of
18 directors of an entity, a special share in the entity,
19 a contractual arrangement with the entity, a formal
20 or informal arrangement to act in concert with an
21 entity, or any other means, to determine, direct,
22 make decisions, or cause decisions to be made, with
23 respect to important matters affecting the entity.

24 “(2) COVERED TRANSACTION.—The term ‘cov-
25 ered transaction’ means any merger, acquisition,

1 takeover, or investment, or the establishment of a
2 new entity, by or with any person, that—

3 “(A) is proposed or pending after the date
4 of the enactment of the United States Foreign
5 Investment Review Act of 2017; and

6 “(B) could result in foreign control of any
7 person that—

8 “(i) is engaged in interstate commerce
9 in the United States; and

10 “(ii)(I) in the case of a transaction in-
11 volving a state-owned enterprise, is valued
12 at \$50,000,000 or more; and

13 “(II) in the case of any other trans-
14 action, is valued at \$1,000,000,000 or
15 more.

16 “(3) PERSON.—The term ‘person’ means an in-
17 dividual or entity.

18 “(4) SECRETARY.—The term ‘Secretary’ means
19 the Secretary of Commerce.

20 “(5) STATE-OWNED ENTERPRISE.—The term
21 ‘state-owned enterprise’ means—

22 “(A) an entity that is owned by, controlled
23 by, or under the influence of, a national, provin-
24 cial, or local government in a foreign country or
25 an agency of such a government; or

1 “(B) an individual acting under the direc-
2 tion or the influence of a government or agency
3 described in subparagraph (A).

4 **“SEC. 1002. AUTHORITY TO REVIEW TRANSACTIONS FOR**
5 **ECONOMIC EFFECT ON THE UNITED STATES.**

6 “(a) MANDATORY NOTIFICATION BY PARTIES.—
7 Each party to a covered transaction shall submit a written
8 notification of the transaction to the Secretary.

9 “(b) REVIEW.—

10 “(1) IN GENERAL.—Upon receiving written no-
11 tification of a covered transaction under subsection
12 (a), the Secretary shall—

13 “(A) review the transaction to determine
14 the economic effect of the transaction on the
15 United States, based on the factors described in
16 subsection (d); and

17 “(B) based on the results of the review,
18 take appropriate action under subsection (c)
19 with respect to the transaction.

20 “(2) UNILATERAL INITIATION OF REVIEW.—
21 The Secretary may initiate a review under para-
22 graph (1) of a covered transaction for which written
23 notification is not submitted under subsection (a).

24 “(3) INITIATION OF REVIEW BY REQUEST FROM
25 CONGRESS.—The Secretary shall initiate a review

1 under paragraph (1) of a covered transaction (deter-
2 mined without regard to the value of the transaction
3 under section 1001(2)(B)(ii)) if the chairperson and
4 the ranking member of the Committee on Finance of
5 the Senate or the Committee on Ways and Means of
6 the House of Representatives requests the Secretary
7 to review the transaction.

8 “(4) NOTIFICATION TO UNITED STATES TRADE
9 REPRESENTATIVE.—Upon receiving a written notifi-
10 cation of a transaction under subsection (a) or initi-
11 ating a review of a transaction under paragraph (2)
12 or (3), as the case may be, the Secretary shall notify
13 the United States Trade Representative.

14 “(c) ACTION.—

15 “(1) ACTION AFTER INITIAL REVIEW.—Not
16 later than 15 days after receiving a written notifica-
17 tion of a transaction under subsection (a) or initi-
18 ating a review of a transaction under paragraph (2)
19 or (3) of subsection (b), as the case may be, the Sec-
20 retary shall—

21 “(A) approve the transaction; or

22 “(B) inform the parties to the transaction
23 that the Secretary requires additional time to
24 conduct a more thorough review of the trans-
25 action.

1 “(2) ACTION AFTER EXTENDED REVIEW.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), if the Secretary informs the parties
4 to a transaction under paragraph (1)(B) that
5 the Secretary requires additional time to con-
6 duct a more thorough review, the Secretary
7 shall, not later than 45 days after receiving the
8 written notification of the transaction under
9 subsection (a) or initiating a review of the
10 transaction under paragraph (2) or (3) of sub-
11 section (b), as the case may be—

12 “(i) complete that review; and

13 “(ii) approve the transaction, prohibit
14 the transaction, or require the parties to
15 the transaction to modify the transaction
16 and resubmit the modified transaction to
17 the Secretary for review under this section.

18 “(B) EXTENSION OF DEADLINE.—The
19 Secretary may extend the deadline under sub-
20 paragraph (A) with respect to the review of a
21 transaction by not more than 15 days.

22 “(3) CASES OF INACCURATE OR INADEQUATE
23 INFORMATION.—The Secretary may prohibit a trans-
24 action under this subsection if the Secretary deter-
25 mines that any party to the transaction provides to

1 the Secretary inaccurate or inadequate information
2 in response to inquiries of the Secretary as part of
3 a review of the transaction under subsection (b).

4 “(4) PUBLIC AVAILABILITY OF DECISION.—
5 Each decision under this subsection to approve, pro-
6 hibit, or allow for modification of a transaction, and
7 a justification for each such decision, shall be made
8 available to the public.

9 “(d) FACTORS TO BE CONSIDERED.—In taking ac-
10 tion with respect to a transaction under subsection (c),
11 the Secretary shall consider any economic factors the Sec-
12 retary considers relevant, including—

13 “(1) the long-term strategic economic interests
14 of the United States;

15 “(2) the history of distortive trade practices in
16 each country in which a foreign party to the trans-
17 action is domiciled, as informed by the report of the
18 United States Trade Representative required by sub-
19 section (h);

20 “(3) control and ownership of each foreign per-
21 son that is a party to the transaction;

22 “(4) impact on the domestic industry, taking
23 into consideration any pattern of foreign investment
24 in the domestic industry; and

1 “(5) any other factors the Secretary considers
2 appropriate.

3 “(e) PUBLIC COMMENTS.—The Secretary shall—

4 “(1) make available to the public each written
5 notification of a covered transaction submitted under
6 subsection (a) and notify the public if the Secretary
7 initiates a review under paragraph (2) or (3) of sub-
8 section (b) with respect to a transaction; and

9 “(2) in the case of a transaction that the Sec-
10 retary determines under subsection (c)(1)(B) re-
11 quires additional time for review, provide a period
12 for public comment on the transaction of not more
13 than 10 days.

14 “(f) CONSULTATIONS.—The Secretary shall consult
15 with the heads of such other Federal agencies (or the des-
16 ignees of such heads) in any review under this section as
17 the Secretary determines to be appropriate, on the basis
18 of the facts and circumstances of the transaction under
19 review.

20 “(g) REQUEST FOR ASSISTANCE FROM INTER-
21 NATIONAL TRADE COMMISSION.—The Secretary may re-
22 quest assistance from the United States International
23 Trade Commission with respect to any of the analysis
24 needed to conduct a review of a transaction under this
25 section.

1 “(h) REPORT BY UNITED STATES TRADE REP-
2 RESENTATIVE.—Not later than 10 days after the Sec-
3 retary receives a written notification of a transaction
4 under subsection (a) or initiates a review of a transaction
5 under paragraph (2) or (3) of subsection (b), as the case
6 may be, the United States Trade Representative shall sub-
7 mit to the Secretary a report with respect to the trans-
8 action that includes, with respect to any country in which
9 a party to the transaction is domiciled—

10 “(1) a description of the history of and current
11 issues affecting the trading relationship between the
12 United States and that country;

13 “(2) an assessment of the extent to which that
14 trading relationship is reciprocal; and

15 “(3) information relevant to that country from
16 annual reports of the Office of the United States
17 Trade Representative, including—

18 “(A) the National Trade Estimate under
19 section 181(b);

20 “(B) the report required by section 182
21 (commonly referred to as the ‘Special 301 Re-
22 port’); and

23 “(C) the report on trade enforcement pri-
24 orities required by section 310.

1 “(i) COORDINATION WITH COMMITTEE ON FOREIGN
2 INVESTMENT IN THE UNITED STATES.—

3 “(1) IN GENERAL.—In the case of a transaction
4 undergoing review under this section and section
5 721 of the Defense Production Act of 1950 (50
6 U.S.C. 4565), the Secretary shall coordinate with
7 the Secretary of the Treasury with respect to those
8 reviews.

9 “(2) REVIEW OF NATIONAL SECURITY CON-
10 CERNS.—Review of any threat posed by a trans-
11 action to the national security of the United States
12 shall be conducted by the Committee on Foreign In-
13 vestment in the United States under section 721 of
14 the Defense Production Act of 1950 and not under
15 this section.

16 **“SEC. 1003. ANNUAL REPORT ON TRANSACTIONS RE-**
17 **VIEWED.**

18 “Not later than one year after the date of the enact-
19 ment of the United States Foreign Investment Review Act
20 of 2017, and annually thereafter, the Secretary shall sub-
21 mit to Congress a report on transactions reviewed under
22 section 1002 that includes—

23 “(1) a summary of the results of the trans-
24 actions reviewed by the Secretary, including—

1 “(A) how many of such reviews were com-
2 pleted in the 15-day period provided for under
3 section 1002(c)(1) and how many of such re-
4 views required longer to complete; and

5 “(B) how many of such transactions were
6 prohibited; and

7 “(2) an analysis of foreign direct investment by
8 industrial sectors, by country of investor, and by
9 type of transaction.

10 **“SEC. 1004. PROHIBITION ON USE OF TAXPAYER DOLLARS**
11 **TO ENCOURAGE INVESTMENT IN THE UNITED**
12 **STATES BY CERTAIN STATE-OWNED ENTER-**
13 **PRISES.**

14 “No funds may be obligated or expended in any fiscal
15 year by the head of any Federal agency to encourage in-
16 vestment in the United States by any state-owned enter-
17 prise that does not operate according to market consider-
18 ations.

19 **“SEC. 1005. CONSISTENCY WITH OBLIGATIONS UNDER**
20 **INTERNATIONAL AGREEMENTS.**

21 “This title shall be applied in a manner consistent
22 with the obligations of the United States under inter-
23 national agreements.

1 **“SEC. 1006. REGULATIONS.**

2 “Not later than 270 days after the date of the enact-
3 ment of the United States Foreign Investment Review Act
4 of 2017, the Secretary of Commerce shall issue regulations
5 to carry out this title.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
7 for the Trade Act of 1974 is amended by adding at the
8 end the following:

 “TITLE X—AUTHORITY TO REVIEW TRANSACTIONS FOR
 ECONOMIC EFFECT ON THE UNITED STATES

 “Sec. 1001. Definitions.

 “Sec. 1002. Authority to review transactions for economic effect on the United
 States.

 “Sec. 1003. Annual report on transactions reviewed.

 “Sec. 1004. Prohibition on use of taxpayer dollars to encourage investment in
 the United States by certain State-owned enterprises.

 “Sec. 1005. Consistency with obligations under international agreements.

 “Sec. 1006. Regulations.”.