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

OCTOBER 18, 2017

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

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”.

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

8 (a) IN GENERAL.—The Trade Act of 1974 (19
9 U.S.C. 2102 et seq.) is amended by adding at the end
10 the following:
“TITLE X—AUTHORITY TO REVIEW TRANSACTIONS FOR ECONOMIC EFFECT ON THE UNITED STATES

“SEC. 1001. DEFINITIONS.

“In this title:

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

“(2) COVERED TRANSACTION.—The term ‘covered transaction’ means any merger, acquisition, takeover, or investment, or the establishment of a new entity, by or with any person, that—

“(A) is proposed or pending after the date of the enactment of the United States Foreign Investment Review Act of 2017; and
“(B) could result in foreign control of any person that—

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

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

“(II) in the case of any other transaction, is valued at $1,000,000,000 or more.

“(3) PERSON.—The term ‘person’ means an individual or entity.

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

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

“(A) an entity that is owned by, controlled by, or under the influence of, a national, provincial, or local government in a foreign country or an agency of such a government; or

“(B) an individual acting under the direction or the influence of a government or agency described in subparagraph (A).
“SEC. 1002. AUTHORITY TO REVIEW TRANSACTIONS FOR ECONOMIC EFFECT ON THE UNITED STATES.

“(a) MANDATORY NOTIFICATION BY PARTIES.—

Each party to a covered transaction shall submit a written notification of the transaction to the Secretary.

“(b) REVIEW.—

“(1) IN GENERAL.—Upon receiving written notification of a covered transaction under subsection (a), the Secretary shall—

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

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

“(2) UNILATERAL INITIATION OF REVIEW.—

The Secretary may initiate a review under paragraph (1) of a covered transaction for which written notification is not submitted under subsection (a).

“(3) INITIATION OF REVIEW BY REQUEST FROM CONGRESS.—The Secretary shall initiate a review under paragraph (1) of a covered transaction (determined without regard to the value of the transaction under section 1001(2)(B)(ii)) if the chairperson and the ranking member of the Committee on Finance of

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the Senate or the Committee on Ways and Means of
the House of Representatives requests the Secretary
to review the transaction.

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

“(c) ACTION.—

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

“(A) approve the transaction; or

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

“(2) ACTION AFTER EXTENDED REVIEW.—

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

“(i) complete that review; and

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

“(B) Extension of deadline.—The Secretary may extend the deadline under subparagraph (A) with respect to the review of a transaction by not more than 15 days.

“(3) Cases of inaccurate or inadequate information.—The Secretary may prohibit a transaction under this subsection if the Secretary determines that any party to the transaction provides to the Secretary inaccurate or inadequate information in response to inquiries of the Secretary as part of a review of the transaction under subsection (b).
“(4) Public Availability of Decision.—

Each decision under this subsection to approve, prohibit, or allow for modification of a transaction, and a justification for each such decision, shall be made available to the public.

“(d) Factors To Be Considered.—In taking action with respect to a transaction under subsection (c), the Secretary shall consider any economic factors the Secretary considers relevant, including—

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

“(2) the history of distortive trade practices in each country in which a foreign party to the transaction is domiciled, as informed by the report of the United States Trade Representative required by subsection (h);

“(3) control and ownership of each foreign person that is a party to the transaction;

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

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

“(e) Public Comments.—The Secretary shall—
“(1) make available to the public each written notification of a covered transaction submitted under subsection (a) and notify the public if the Secretary initiates a review under paragraph (2) or (3) of subsection (b) with respect to a transaction; and

“(2) in the case of a transaction that the Secretary determines under subsection (c)(1)(B) requires additional time for review, provide a period for public comment on the transaction of not more than 10 days.

“(f) Consultations.—The Secretary shall consult with the heads of such other Federal agencies (or the designees of such heads) in any review under this section as the Secretary determines to be appropriate, on the basis of the facts and circumstances of the transaction under review.

“(g) Request for Assistance From International Trade Commission.—The Secretary may request assistance from the United States International Trade Commission with respect to any of the analysis needed to conduct a review of a transaction under this section.

“(h) Report by United States Trade Representative.—Not later than 10 days after the Secretary receives a written notification of a transaction
under subsection (a) or initiates a review of a transaction under paragraph (2) or (3) of subsection (b), as the case may be, the United States Trade Representative shall submit to the Secretary a report with respect to the transaction that includes, with respect to any country in which a party to the transaction is domiciled—

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

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

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

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

“(B) the report required by section 182 (commonly referred to as the ‘Special 301 Report’); and

“(C) the report on trade enforcement priorities required by section 310.

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

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

“(2) Review of national security concerns.—Review of any threat posed by a transaction to the national security of the United States shall be conducted by the Committee on Foreign Investment in the United States under section 721 of the Defense Production Act of 1950 and not under this section.

“SEC. 1003. ANNUAL REPORT ON TRANSACTIONS REVIEWED.

“Not later than one year after the date of the enactment of the United States Foreign Investment Review Act of 2017, and annually thereafter, the Secretary shall submit to Congress a report on transactions reviewed under section 1002 that includes—

“(1) a summary of the results of the transactions reviewed by the Secretary, including—

“(A) how many of such reviews were completed in the 15-day period provided for under section 1002(c)(1) and how many of such reviews required longer to complete; and
“(B) how many of such transactions were prohibited; and
“(2) an analysis of foreign direct investment by industrial sectors, by country of investor, and by type of transaction.

“SEC. 1004. PROHIBITION ON USE OF TAXPAYER DOLLARS TO ENCOURAGE INVESTMENT IN THE UNITED STATES BY CERTAIN STATE-OWNED ENTERPRISES.

“No funds may be obligated or expended in any fiscal year by the head of any Federal agency to encourage investment in the United States by any state-owned enterprise that does not operate according to market considerations.

“SEC. 1005. CONSISTENCY WITH OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

“This title shall be applied in a manner consistent with the obligations of the United States under international agreements.

“SEC. 1006. REGULATIONS.

“Not later than 270 days after the date of the enactment of the United States Foreign Investment Review Act of 2017, the Secretary of Commerce shall issue regulations to carry out this title.”.
(b) CLERICAL AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by adding at the 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."