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APPROVED  
OCT 26 1974  
Statement  
Issued 10/28

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2840 - Foreign Investment Study  
Act of 1974  
Sponsor - Sen. Inouye (D) Hawaii

J. Archibald  
10/29

Last Day for Action

October 29, 1974 - Tuesday

Purpose

To require the Departments of Commerce and Treasury to conduct a comprehensive study of foreign investment in the United States.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Department of Commerce	Approval
Council on International Economic Policy	Approval (draft signing statement attached)
Department of State	Approval
Department of Justice	No objection (informally)

Discussion

Current American policy is to grant foreign investors "national treatment." We freely admit foreign investors and treat them the same as American investors. Foreign investment has increased at a record level recently. While foreign investments do not yet constitute a significant percentage of total U.S. investment, the rapid increase has caused some fears that control over certain industries may be passing to foreign investors. Furthermore, the available information base is not considered adequate; the last full scale survey was done in 1959. Mr. Peter Flanigan



is quoted in the House Committee on Foreign Affairs Report on H.R. 15487, a companion bill, as follows:

"...in view of the lapse of time since the last survey, the recent surge of investment flows into the United States, the prospects for further activity, and the interest of the Congress in this subject, a new survey is clearly required."

The enrolled bill would authorize and direct a study to be done of foreign direct and portfolio investment. Foreign direct investment is defined as ownership by foreigners of 25 percent or more in a firm's voting stock. Foreign portfolio investment is defined as ownership of less than 25 percent.

The enrolled bill would authorize and direct the respective Secretaries, to do the following:

- conduct a comprehensive overall study of foreign direct and portfolio investment in the United States
- collect information from and consult with any suitable public and private U.S. and foreign sources with respect to such investment
- investigate the nature, scope, and magnitude of such investment
- survey the reasons for such investment
- identify the processes and mechanisms, through which foreign investment flows, the financing methods, and the effects of such investment on U.S. financial markets
- analyze the significance of such investments in acquisitions and takeovers of U.S. enterprises and the effects on U. S. business competition
- analyze the geographic and economic concentration of such investment
- analyze the effect of U.S. laws, regulations, and other controls and policies on such investment

- compare U.S. investors' activities abroad with foreign investment in the U.S. and appraise the impact of U.S. foreign investments on foreign investment in the U.S.; and
- study the adequacy of information and recommend means to keep information current.

In addition, the bill would require the Secretary of Commerce to:

- analyze the effects of foreign direct investment on U.S. national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments and trade, employment opportunities, and the role of U.S. and foreign managers employed by such firms and other such factors; and
- determine the effects of various accounting, financial reporting, and such practices on foreign investment in the U.S.

The enrolled bill would further authorize the Secretaries to establish rules and regulations regarding maintenance of records germane to the study and to require presentation of information under oath.

S. 2840 would provide for the confidentiality of any information provided through restrictions on access to and use of the information and for enforcement through the courts of demands for information.

The enrolled bill provides that either Secretary may bring an action, in his discretion, to enforce demands for information. While this contradicts Federal policy under OMB Circular A-99 respecting control of Federal litigation, the authority is discretionary and agencies could work out with Justice appropriate procedures to assure necessary coordination of litigation.

The enrolled bill further:

- authorizes procurement of consulting services and reimbursable use of services and facilities of other agencies
- requires an interim report in 12 months and a final report and recommendation in 1 1/2 years; and
- authorizes appropriations for the study of not to exceed \$3 million.

The Department of Commerce in its views letter on the enrolled bill recommends approval but indicates that 1½ years is too short a period to complete the study.

CIEP has attached a draft signing statement with its views letter. It emphasizes the need for additional information and reaffirms the Administration's commitment to maintaining an "open door" to foreign investors. Whether it is desirable to take a policy position in a signing statement on a matter which is to be intensively studied under the enrolled bill's direction is a question which we think you will wish to consider.



Assistant Director for  
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day - October 29

October 25, 1974

MEMORANDUM FOR:

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

Enrolled Bill S. 2840  
Foreign Investment Study  
Act of 1974

Attached for your consideration is Senate bill, S. 2840, sponsored by Senator Inouye, which requires the Departments of Commerce and Treasury to conduct a comprehensive study of foreign investment in the United States.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The NSC, the Counsel's office (Chapman), Bill Timmons, and Domestic Council all recommend approval of the bill and issuance of the signing statement which Paul Theis has approved.

RECOMMENDATION

That you sign Senate bill, S. 2840 (Tab B) and approve proposed Presidential signing statement (Tab C).

**Department of Justice**  
**Washington, D.C. 20530**

OCT 24 1974

Honorable Roy L. Ash  
Director, Office of  
Management and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 2840, the proposed Foreign Investment Study Act of 1974.

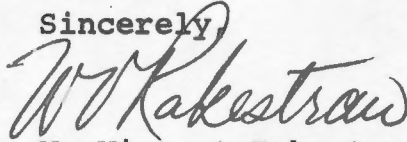
The enrolled bill would authorize and direct the Secretary of the Treasury and the Secretary of Commerce to conduct a study of foreign direct and portfolio investments in the United States. An interim report to the Congress would be required at the end of twelve months with the final report to follow six months later.

Section 7 of the bill would authorize each Secretary to require any person subject to the jurisdiction of the United States to maintain and possibly report under oath, any information which such Secretary may determine is germane to his functions under the Act.

Our concern is with section 8 which appears to authorize a civil penalty not exceeding \$10,000 if a United States district court were to find that such a penalty is necessary to obtain compliance with an injunction or restraining order which may be brought by either Secretary. While the language "such Secretary may in his discretion bring an action" appearing in subsection (b) is of course ambiguous, we regard it as not inconsistent with 28 U.S.C. 516 which reserves the conduct of Government litigation to the Attorney General. The Attorney General's control over such subsection (b) injunctive relief litigation is especially important in light of the maximum \$10,000 and/or one year criminal penalty contained in subsection (c). The imposition of possibly conflicting civil and criminal actions should of course be under the direct supervision of the Attorney General. The proper construction of the ambiguous section 8(b) should be that each Secretary would be authorized to refer potential actions for injunctive relief to the Attorney General for appropriate action.

With this construction, the Department of Justice has no objection to Executive approval of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Vincent Rakestraw". The signature is written in dark ink and is positioned above the typed name.

W. Vincent Rakestraw  
Assistant Attorney General





THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D. C. 20220

OCT 16 1974

Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for Legislative  
Reference

Sir:

Your office has requested the views of this Department on the enrolled enactment of S. 2840, "Foreign Investment Study Act of 1974", which would authorize and direct the Secretary of the Treasury and the Secretary of Commerce to conduct a comprehensive, overall study of foreign direct and foreign portfolio investment in the United States. Pursuant to the Act, the Treasury would conduct the portfolio investment portion of the study. The study would constitute the first complete benchmark survey of foreign portfolio investment since 1941.

The Department recommends that the enrolled enactment be approved by the President.

Sincerely yours,

General Counsel



**GENERAL COUNSEL OF THE  
DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

**OCT 21 1974**

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of this Department concerning S. 2840, an enrolled enactment

"To authorize the Secretary of Commerce and the Secretary of the Treasury to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes."

The enrolled enactment would provide generally for the Secretary of Commerce to conduct a study of foreign direct investment in the United States while the Secretary of the Treasury would conduct a study of portfolio investment in the United States. The two agencies would cooperate in their studies and interchange information as appropriate in the course of the studies.

The legislation contains provisions adequate to enable us to carry out the study to be performed by this Department.

The Department of Commerce recommends approval by the President of S. 2840.

It should be noted, however, that the legislation requires final reports with respect to the two studies within one and one-half years after enactment of S. 2840.

The Department does not believe that it will be possible to complete the foreign direct investment study within the period of time allowed in the legislation. During the course of Congressional consideration of S. 2840 we made known to the Congress our belief that more time was desirable. In floor debates on the legislation it was indicated that the Congress would be receptive to amendatory legislation extending the time for submission of the final report if it developed during the course of the study that more time was in fact needed.

Enactment of this legislation would involve the expenditure of additional funds by this Department. The legislation authorizes a total of \$3 million to be appropriated to carry out the purposes of the Act. The Department estimates that about \$1,700,000 during fiscal years 1975, 1976 and 1977 would be required in performance of the Department's part of the work authorized by S. 2840. While some portion of this amount can be made available from current appropriations and our present FY 1976 budget request, it seems clear that an FY 1975 budget supplemental and an FY 1976 budget amendment will be necessary in addition. Fiscal requirements for FY 1977 will be developed in the normal budget process starting in the Spring of 1975.

Sincerely,

*Karl E. Bakke*


General Counsel

MEMORANDUM

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

October 17, 1974

FOR : MR. W. H. ROMMEL, Assistant Director for Legislative  
Reference, OMB, Room 7201 - New EOB

FROM : SKIP HARTQUIST 

SUBJECT: Enrolled Bill Request - S. 2840, The Foreign Investment  
Study Act of 1974

CIEP has no objections to S. 2840 in its present form. Our staff worked closely with Congress in developing this legislation, and while there are slight variations in Sections 7 and 8 of the bill from our recommendations, we are satisfied with the final result.

We recommend that the President issue the enclosed statement in connection with the signing of this bill. A copy of this statement has also been submitted to Paul Theis, Executive Editor.

Attachment

## Statement by the President

Today I have signed S.2840, the "Foreign Investment Study Act of 1974."

This bill provides for the Departments of Commerce and the Treasury to undertake comprehensive studies of foreign direct and portfolio investment in the United States. Under the authority provided by the Bill they will (1) conduct "benchmark" surveys of all existing foreign direct and portfolio investment in the U.S.; (2) analyze the effects of foreign investment on the U.S. economy; (3) review our existing reporting requirements that apply to foreign investors; and (4) make recommendations on means for us to keep our information and statistics on foreign investment current. These surveys will be conducted early next year and cover data for 1974; an interim report of the results will be submitted to Congress in 12 months and a full and complete report in 18 months.

While we have been collecting data on foreign investment in the U.S. for many years, a major conclusion of a recent Executive Branch review of U.S. incoming investment policy was that the available data on the activities of foreign investors in this country are inadequate. I therefore welcome this bill as a basis for obtaining more and better information on foreign investment here.

During the past year there have been increasing expressions of concern from the public and the Congress about the impact of foreign investment in the U.S. and, in particular, the adequacy of our data gathering requirements with respect to it. Legislation has been introduced which would implement new reporting systems or restrict foreign investment.

The Administration has opposed the proposals for the immediate establishment of new reporting systems for a number of reasons, the most important being that we do not want to pre-judge the results of the study required in this bill. We would prefer to examine carefully all the alternative means of improving our data-gathering capabilities and believe that, as a result of this process, we can determine the most efficient way to achieve our objectives without sacrificing other U.S. policy interests.

In connection with the signing of this Act, I would also like to reaffirm this Administration's commitment to the established U.S. policy of maintaining an "open door" to foreign investors. U.S. policy with respect to international investment generally has been based on the premise that the operation of free market forces in determining

the direction of worldwide investment flows will maximize the efficient use and allocation of worldwide capital resources in the international economy. Accordingly, our basic policy toward foreign investments has been to freely admit foreign investors and to treat them on the basis of equality with domestic investors once they are operating within the U.S. We intend to continue to adhere to this approach and will oppose any new restrictions on foreign investment in the U.S. except where absolutely necessary on national security grounds or to preserve an essential national interest.



DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 16 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D.C.

Dear Mr. Ash:

This is in response to Mr. Rommel's letter of October 15 requesting State Department views and recommendations on S. 2840, the Foreign Investment Study Act of 1974.

The Department of State endorses the purpose of the bill--to improve our ability to analyze developments in the area of foreign investment in the United States--and believes that the bill will successfully accomplish this purpose. We therefore recommend that the President approve it.

Cordially,

A handwritten signature in cursive script that reads "Linwood Holton".

Linwood Holton  
Assistant Secretary  
for Congressional Relations

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

WASHINGTON, D.C. 20500

October 17, 1974

PLEASE RETURN TO:  
RESEARCH  
ROOM 121 E. O. B.

MEMORANDUM FOR

Paul A. Theis  
Executive Editor

FROM: Allen E. Clapp *asc*  
SUBJECT: Draft Presidential Statement

Attached is a draft Presidential Statement that we are submitting for release to the public in connection with the anticipated signing of S.2840, "The Foreign Investment Study Act of 1974." We are sending it to you on the assumption that you or your staff will want to put it in the proper form for statements of this type.

I hope that you and your staff will feel free to consult with me on any questions you might have with respect to the contents of the statement. I can be reached on extension 6597.

Attachment

1974 OCT 17 PM 5 29



Statement by the President

Today I have signed S.2840, the "Foreign Investment Study Act of 1974."

*int A*

This bill provides for the Departments of Commerce and the Treasury to undertake comprehensive studies of foreign direct and portfolio investment in the United States. Under the authority provided by the Bill they will (1) conduct "benchmark" surveys of all existing foreign direct and portfolio investment in the U.S.; (2) analyze the effects of foreign investment on the U.S. economy; (3) review our existing reporting requirements that apply to foreign investors; and (4) make recommendations on means for us to keep our information and statistics on foreign investment current. These surveys will be conducted early next year and cover data for 1974; an interim report of the results will be submitted to Congress in 12 months and a full and complete report in 18 months.

While we have been collecting data on foreign investment in the U.S. for many years, a major conclusion of a recent Executive Branch review of U.S. incoming investment policy was that the available data on the activities of foreign investors in this country are inadequate. I therefore welcome this bill as a basis for obtaining more and better information on foreign investment here.

During the past year there have been increasing expressions of concern from the public and the Congress about the impact of foreign investment in the U.S. and, in particular, the adequacy of our data gathering requirements with respect to it. Legislation has been introduced which would implement new reporting systems or restrict foreign investment.

The Administration has opposed the proposals for the immediate establishment of new reporting systems for a number of reasons, the most important being that we do not want to pre-judge the results of the study required in this bill. We would prefer to examine carefully all the alternative means of improving our data-gathering capabilities and believe that, as a result of this process, we can determine the most efficient way to achieve our objectives without sacrificing other U.S. policy interests.

In connection with the signing of this Act, I would also like to reaffirm this Administration's commitment to the established U.S. policy of maintaining an "open door" to foreign investors. U.S. policy with respect to international investment generally has been based on the premise that the operation of free market forces in determining

the direction of worldwide investment flows will maximize the efficient use and allocation of worldwide capital resources in the international economy. Accordingly, our basic policy toward foreign investments has been to freely admit foreign investors and to treat them on the basis of equality with domestic investors once they are operating within the U.S. We intend to continue to adhere to this approach and will oppose any new restrictions on foreign investment in the U.S. except where absolutely necessary on national security grounds or to preserve an essential national interest.

Due to be signed Oct. 29th, Tuesday.

STATEMENT BY The PRESIDENT ON SIGNING S. 2840

It gives me great pleasure today to sign S. 2840, the "Foreign Investment Study Act of 1974."

A recent study by the Executive Branch concluded that the available information on the activities of foreign investors in the United States is inadequate. The bill I sign into law today will go a long way toward remedying that deficiency.

Insert A

When this study is completed, we will be in a position to know better how to conduct ongoing monitoring of foreign investment activity in the United States. Earlier, this Administration had opposed new reporting systems which would have lacked the benefits of the information ~~exam~~ which will be generated by the actions under S. 2840. We are not opposed to keeping a watch on foreign investment, but we do want to do it in the most efficient and helpful way, with the ~~best~~ aid of the greatest possible amount of data.

As I sign this Act, I reaffirm that it is intended to gather information only. It is not in any sense a sign of a change in America's traditional open door policy towards foreign investment. We continue to believe that the operation of free market forces will direct worldwide investment flows in the most productive way. Therefore my Administration will oppose any new restrictions on foreign investment in the United States except where absolutely necessary on national security grounds or to protect an essential national interest.

Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 2840  
Foreign Investment Study  
Act of 1974

Attached for your consideration is Senate bill, S. 2840, sponsored by Senator Inouye, which requires the Departments of Commerce and Treasury to conduct a comprehensive study of foreign investment in the United States.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The NSC, the Counsel's office (Chapman), Bill Timmons, and Domestic Council all recommend approval of the bill and issuance of the signing statement which Paul Theis has approved.

RECOMMENDATION

That you sign Senate bill, S. 2840 (Tab B) and approve proposed Presidential signing statement (Tab C).

Last Day - October 29

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RECOMMENDATION

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(Stein)PT

October 24, 1974

STATEMENT BY THE PRESIDENT ON SIGNING S. 2840

It gives me great pleasure ~~today~~ to sign S. 2840, the "Foreign Investment Study Act of 1974."

A recent study by the executive branch concluded that the available information on the activities of foreign investors in the United States is inadequate. The bill I sign into law today will go a long way toward remedying that deficiency.

This bill provides for the Departments of Commerce and the Treasury to undertake comprehensive studies of foreign direct and portfolio investment in the United States. Under the authority provided by the bill they will (1) conduct "benchmark" surveys of all existing foreign direct and portfolio investment in the U.S.; (2) analyze the effects of foreign investment on the U.S. economy; (3) review our existing reporting requirements that apply to foreign investors; and (4) make recommendations on means for us to keep our information and statistics on foreign investment current. These surveys will be conducted early next year and cover data for 1974; an interim report of the results will be submitted to the Congress ~~12 months~~ after the date of enactment of this act and a full and complete report, together with appropriate recommendations, within 18 months of the date of enactment.

When this study is completed, we will be in a position to know better how to conduct ongoing monitoring of foreign investment activity in the United States. Earlier, this Administration had opposed new reporting systems which would have lacked the benefits of the information which will be generated by the actions under S. 2840. We are not opposed to keeping a watch on foreign investment, but we do want to do it in the most efficient and helpful way, with the aid of the greatest possible amount of data.

As I sign this act, I reaffirm that it is intended to gather information only. It is not in any sense a sign of a change in America's traditional open door policy towards foreign investment. We continue to believe that the operation of free market forces will direct worldwide investment flows in the most productive way. Therefore my Administration will oppose any new restriction on foreign investment in the United States except where absolutely necessary on national security grounds or to protect an essential national interest.

# # #



THE WHITE HOUSE

WASHINGTON

October 24, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS  
FROM: WILLIAM E. TIMMONS *W.E.T. for HD*  
SUBJECT: Action Memorandum - Log No. 697  
Enrolled Bill S. 2840 - Foreign Investment  
Study Act of 1974

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

## THE WHITE HOUSE

ADMINISTRATIVE MEMORANDUM

WASHINGTON

LOG NO.: 697

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION: Geoff Shepard  
 NSC/S  
 Phil Buchen  
 ✓ Bill Timmons

cc (for information): Warren K. Hendriks  
 Jerry Jones  
 Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 2840 - Foreign Investment Study  
Act of 1974

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Kathy Tindle - West Wing

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
 For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 697

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION: ✓ Geoff Shepard  
NSC/S  
Phil Buchen  
Bill Timmons

cc (for information): Warren K. Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 2840 - Foreign Investment Study Act of 1974

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*Recommend Approval*

*All for Ger*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 697

Date: October 23, 1974

Time: 6:00 p.m.

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Act of 1974

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## REMARKS:

Please return to Kathy Tindle - West Wing

*No objection*  
*D.C.*

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
 For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 697

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION:

*Handwritten:* Geoff Shepard  
*Handwritten:* NSC's - subject  
*Handwritten:* Bill Buchen  
*Handwritten:* Bill Timmons  
*Handwritten:* statement

cc (for information): Warren K. Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 2840 - Foreign Investment Study Act of 1974

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

\_\_\_\_\_  
K. R. COLE, JR.  
For the President

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day - October 29

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

SUBJECT: ~~Enrolled Bill S. 2840~~  
Foreign Investment Study  
Act of 1974

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Roy Ash etc.

The NSC, ~~the~~ Counsel's office (Chapman), Bill Timmons and <sup>Donald</sup> ~~Paul~~ <sup>Carr</sup> ~~Theris~~ all recommend approval.

RECOMMENDATION

THAT you sign Senate bill, S. 2840 (Tab B) and approve proposed Presidential signing statement (Tab C).

and issuance  
of the signing statement  
which Paul Theris has  
approved.

~~KE~~  
There is a the business  
concerning the business  
signing statement May is  
on this one so  
allocated to do  
decision memo

STATEMENT BY THE PRESIDENT

It gives me great pleasure to sign S. 2840, the "Foreign Investment Study Act of 1974."

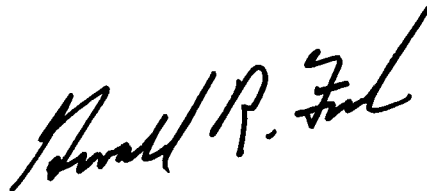
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When this study is completed, we will be in a position to know better how to conduct ongoing monitoring of foreign investment activity in the United States. Earlier, this Administration had opposed new reporting systems which would have lacked the benefits of the information which will be generated by the actions under S. 2840. We are not opposed to keeping a watch on foreign investment, but we do want to do it in the most efficient and helpful way, with the aid of the greatest possible amount of data.

As I sign this act, I reaffirm that it is intended to gather information only. It is not in any sense a sign of a change in America's traditional open door policy towards foreign investment. We continue to believe that the operation of free market forces will direct worldwide investment flows in the most productive way. Therefore my Administration will oppose any new restriction on foreign investment in the United States except where absolutely necessary on national security grounds or to protect an essential national interest.

A handwritten signature in black ink, reading "Ronald R. Fuld". The signature is written in a cursive style with a prominent, sweeping flourish at the end.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 23 1974

To  
Sharon Hendricks  
10-23-74  
5:15 p.m.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2840 - Foreign Investment Study  
Act of 1974  
Sponsor - Sen. Inouye (D) Hawaii

Last Day for Action

October 29, 1974 - Tuesday

Purpose

To require the Departments of Commerce and Treasury to conduct a comprehensive study of foreign investment in the United States.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Department of Commerce	Approval
Council on International Economic Policy	Approval (draft signing statement attached)
Department of State	Approval
Department of Justice	No objection (informally)

Discussion

Current American policy is to grant foreign investors "national treatment." We freely admit foreign investors and treat them the same as American investors. Foreign investment has increased at a record level recently. While foreign investments do not yet constitute a significant percentage of total U.S. investment, the rapid increase has caused some fears that control over certain industries may be passing to foreign investors. Furthermore, the available information base is not considered adequate; the last full scale survey was done in 1959. Mr. Peter Flanigan

STATEMENT BY THE PRESIDENT

It gives me great pleasure to <sup>(have signed)</sup> ~~sign~~ S. 2840, the "Foreign Investment Study Act of 1974."

A recent study by the executive branch concluded that the available information on the activities of foreign investors in the United States is inadequate. The bill I sign into law today will go a long way toward remedying that deficiency.

This bill provides for the Departments of Commerce and the Treasury to undertake comprehensive studies of foreign direct and portfolio investment in the United States. Under the authority provided by the bill they will (1) conduct "benchmark" surveys of all existing foreign direct and portfolio investment in the U.S.; (2) analyze the effects of foreign investment on the U.S. economy; (3) review our existing reporting requirements that apply to foreign investors; and (4) make recommendations on means for us to keep our information and statistics on foreign investment current. These surveys will be conducted early next year and cover data for 1974; an interim report of the results will be submitted to the Congress 12 months after the date of enactment of this act and a full and complete report,

together with appropriate recommendations, within 18 months of the date of enactment.

When this study is completed, we will be in a position to know better how to conduct ongoing monitoring of foreign investment activity in the United States. Earlier, this Administration had opposed new reporting systems which would have lacked the benefits of the information which will be generated by the actions under S. 2840. We are not opposed to keeping a watch on foreign investment, but we do want to do it in the most efficient and helpful way, with the aid of the greatest possible amount of data.

As I sign this act, I reaffirm that it is intended to gather information only. It is not in any sense a sign of a change in America's traditional open door policy towards foreign investment. We continue to believe that the operation of free market forces will direct worldwide investment flows in the most productive way. Therefore my Administration will oppose any new restriction on foreign investment in the United States except where absolutely necessary on national security grounds or to protect an essential national interest.

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~~Edward R. Roybal~~

Office of the White House Press Secretary  
-----THE WHITE HOUSE

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FOREIGN INVESTMENT STUDY  
ACT OF 1974

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REPORT  
OF THE  
SENATE COMMITTEE ON COMMERCE  
ON  
S. 2840  
TO AUTHORIZE THE SECRETARY OF COMMERCE TO  
CONDUCT A STUDY OF FOREIGN DIRECT AND PORT-  
FOLIO INVESTMENT IN THE UNITED STATES, AND  
FOR OTHER PURPOSES



June 11, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

## FOREIGN INVESTMENT STUDY ACT OF 1974

JUNE 11, 1974.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce,  
submitted the following

### REPORT

[To accompany S. 2840]

The Committee on Commerce, to which was referred the bill (S. 2840) to authorize the Secretary of Commerce to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

#### PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of Commerce and the Secretary of the Treasury to undertake a comprehensive study of foreign direct and portfolio investment in the United States and to report to the Congress on the results of their study.

The proposed bill authorizes the Secretary of the Treasury and the Secretary of Commerce to divide the responsibility for the study. The Secretaries shall identify and collect information necessary to the study, consult with and secure information from representatives of non-governmental organizations, and consult with and cooperate with other governmental agencies and organizations.

Both the Secretary of Commerce and the Secretary of the Treasury will be required to include within their surveys, to the extent feasible, certain specific subjects. The services of consultants and experts may be procured in conjunction with the study, and the Secretaries may utilize, on a reimbursable basis when appropriate, the available services, equipment, personnel, and facilities of any agency or instrumentality of the Federal Government. The proposed legislation authorizes a sum not to exceed \$3 million to carry out the purposes of the Act.

## BACKGROUND

The bill S. 2840 was introduced on December 20, 1973. Hearings on the bill were held on March 7, 1974, and the bill was ordered favorably reported by the full Committee in executive session on May 8, 1974, as amended. All of the Administration representatives testifying before the Committee expressed general accord with the objectives of the legislation.

## NEEDS

*United States policy*

Current American policy is to grant foreign investors "national treatment", that is, to freely admit foreign investors and to treat them on the basis of equality with American investors once they have entered the United States market. Unlike some other industrial nations, the United States neither offers special investment incentives nor discourages investments—with a few internationally accepted exceptions. These exceptions include coastwise and freshwater shipping, domestic communications, atomic energy, domestic air transport, exploitation of federal mineral lands, and hydro-electric power.

American policy towards foreign investment is based on the view that investment can result in new technology and increased job opportunities. Furthermore, at the end of 1972 Americans had invested more than \$94 billion abroad, and consequently the United States has a major stake in the maintenance of a free global economy.

*Dimensions of foreign investment*

Foreign investment in the United States has been made in two forms. Foreign direct investment is defined for statistical purposes as ownership by foreigners of 25 percent or more of a firm's voting stock. Foreign portfolio investment is ownership of less than 25 percent. Such definitions do not, however, indicate the degree to which foreign investors influence corporate policy or exercise management control. The ability and willingness of foreign investors to control an American firm's policy clearly differs from case to case. It is foreign direct investment which disturbs most individuals since this type of investment implies a degree of foreign control. The 25 percent distinction provides a convenient though rough guide to distinguishing between the types of foreign investment in the United States.

In 1973 the United States witnessed a record amount of new foreign direct investment in this country, amounting to approximately \$2 billion, according to official Federal figures. Total accumulated foreign direct investment was estimated at approximately \$16.5 billion. This sum was considerably in excess of foreign direct investment in previous years and consequently has caused fears that control over certain industries is passing to foreign investors. Private compilations suggest that the total may be much higher than official figures indicate.

Aggregate foreign portfolio investment amounted to an estimated \$38.6 billion at the end of 1972, according to Treasury Department figures, and for the first nine months of 1973 new portfolio investment totaled \$3.4 billion.

Foreign investment in the United States is a relatively old economic phenomenon. In 1950 direct investment totaled \$3.4 billion, largely representing foreign companies which had long been established in the United States. The largest foreign holdings have traditionally

been British. Other nations with large direct investments in the United States are Canada, the Netherlands, Switzerland, Germany, and most recently, Japan. With large foreign reserves, Arab investors can also be expected to increase their investments in the United States, although it is still premature to predict the form and magnitude of the anticipated investments.

Since World War II, the share of foreign direct investment in manufacturing has risen substantially and according to the latest available figures accounts for approximately half of the foreign direct investment in this country. Of particular importance is the fact that Federal figures showed that by the end of 1972 the petroleum industry accounted for 23 percent of aggregate foreign direct investment in the United States. Other industries in which significant foreign direct investments have been made are finance, insurance, and trade.

Foreign direct and portfolio investments do not yet constitute a significant percentage of total United States investment and assets. The Department of the Treasury has estimated that all foreign portfolio investments in the United States owned directly by foreigners or held for them by United States nominees comprise less than 3 percent of the market value of all outstanding private American securities. Similarly the foreign direct investment of approximately \$2 billion compares to total domestic investment of approximately \$200 billion in 1973.

*Inadequacy of information*

The Department of Commerce collects, assembles, and publishes information on inward and outward currency flows in connection with the maintenance of the United States balance of payments accounts and the fulfillment of United States international financial responsibilities under the Bretton Woods Agreement Act and subsequent commitments. Current balance of payments information on foreign direct investments is collected on a quarterly basis from approximately 400 United States firms which are 25 percent or more owned by foreign companies. Under the current law, only those firms with a foreign capital investment of \$2 million or more are required to file reports. Information on affiliates with a smaller foreign capitalization is collected only in benchmark study years. The last such year was 1959. Estimates for all affiliates are based on information provided by the 400 participating affiliates.

Information on portfolio investment is collected by the Federal Reserve Banks for the Department of the Treasury, which requires U.S. brokers, dealers, and banks to file a monthly report, *Treasury Foreign Exchange S-1*, covering transactions for their own and customers' accounts. Other domestic corporations report when they deal directly with foreigners in buying or selling securities.

These reports classify foreign purchases and sales of long-term securities by type, for example, stocks and bonds. The data also shows the country of the foreign purchaser or seller, on the basis of the records of the reporting firm. Summaries of the data are reported monthly in the *Treasury Bulletin*. The Treasury Department maintains a broader statistical system for collecting information on all private capital transactions with foreigners other than direct investments. This system is used to calculate private capital transactions' accounts in the United States balance of payments.

The Securities and Exchange Commission is another agency which exercises data gathering responsibility. Under the Securities Exchange Act of 1934, investors who acquire more than five percent of a firm's stock are required to furnish the Commission with certain information, including the identity of the purchasers, purpose of the purchase, etc. The Commission also receives certain other information on investors from the issuers of such securities under the 1934 Act.

Both the Securities Act of 1933 and the Investment Advisers Act of 1940 also require certain information to be filed with the Commission. Together, the three securities Acts generally require substantial investors to report their holdings of securities of such companies to the Commission. Changes in holdings, acquisitions, tenders offers, etc. are also reported to the Commission.

Hearings have revealed, however, that current statistical and data gathering procedures by Federal agencies are deficient and may be seriously understating the magnitude of foreign investment in the United States. In the case of foreign direct investments, for example, the Department of Commerce has not been able to develop methods to measure accurately real estate investments. Identifying such investments is difficult because it would require checking land records, which are kept at the county level. Furthermore, such investments can be made with minimal capital inflow although the purchases may be substantial. Thus, while it is known, that there have been large investments in real estate in Hawaii, the West Coast, Midwestern farmland and metropolitan areas, the United States Government has little accurate information as to the size of these investments. Likewise, information is received on an overall company basis and not with respect to individual plants or establishments. No information on financial and operating data of American affiliates has been collected since 1959, when foreign direct investments were less than one-half of the current estimated figure.

Information on aggregate foreign portfolio investment is likewise inadequate. Because of the system of capital reporting administered by the Federal Reserve, data on current flows are reasonably accurate. However, the data on the market value of such securities are estimates based on periodic updating of the 1949 Treasury Department benchmark study. It is possible that the 1972 estimate of \$38.6 billion may be subject to a large margin of error in view of the difficulty in making accurate adjustments on an aggregate of securities whose volume has changed drastically since the last benchmark study was undertaken 25 years ago. Furthermore, it would be anticipated that a survey on foreign portfolio investment would lead to a review of methodology and improvements in the analysis of economic and financial implications of such investment.

Information currently being provided to the Securities and Exchange Commission also may not be adequate to study fully the impact of foreign portfolio investors in American markets. The statutes administered by the Commission do not distinguish between substantial foreign and domestic investors, and hence the Commission has not attempted to segregate data except as it relates to cash tender offers. Foreign shareholders with less than a five percent interest are not required to file reports; nor are purchasers of debt securities. Moreover, even assuming that the required information is filed,

the Commission does not have the enforcement staff to confirm the accuracy of the data.

The gap in information makes it difficult to assess the domestic economic impact of foreign direct and portfolio investment. American policy is predicated upon available data and statistics. Preliminary information indicates that the overall effect of foreign investment has been beneficial. However, the lack of more accurate data presents a serious problem in the formulation of a coherent and consistent American response to foreign investment in the United States. Additional information could lead to a reassessment of United States policy if it uncovers a generally adverse impact on the domestic economy. The imposition of significant restrictions on foreign investment in the United States would represent a reversal of current American policy, but such action should be taken only upon the basis of more complete information than is currently available.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1*

The short title of the bill is the Foreign Investment Study Act of 1974.

##### *Section 2*

Section 2 authorizes and directs the Secretary of the Treasury and the Secretary of Commerce to conduct a comprehensive study of foreign direct and portfolio investments in the United States.

##### *Section 3*

This section directs the Departments of Commerce and the Treasury to determine the division and precise limits of each Department's responsibilities for the individual portions of the study.

##### *Section 4*

Section 4 directs the Secretary of Commerce and the Secretary of the Treasury to identify and collect information necessary for the study; consult with and secure information from non-governmental representatives as specified in subsection (2) and other groups they deem suitable; and consult and cooperate with other government agencies and, to the extent appropriate, with foreign government and international organizations. It is anticipated that the information available from such agencies as the Securities and Exchange Commission, which has substantial data in its files, would be utilized in this project.

##### *Section 5*

Section 5 authorizes the Secretary of Commerce to conduct that portion of the study relating to foreign direct investment. It specifies certain areas which should be included in the study to the extent the Secretary determines feasible. These include: the nature, scope, magnitude, and rate of foreign direct investment activities in the United States; the reasons for foreign direct investment in the United States; the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets; the scope and significance of foreign



direct investment in acquisitions and takeovers of existing American companies, the significance of such investments in the form of new facilities or joint ventures, and the effects of foreign direct investment activities on domestic business competition; the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors; the effects of foreign direct investment on United States national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant product markets; the effects of foreign direct investments on employment opportunities and practices and the activities of executives employed by foreign controlled firms; the effect of Federal, regional, State or local laws, rules, regulations, controls and policies on foreign direct investment activities; a comparison of foreign direct investment activities in the United States with comparable foreign direct investment by American firms; the adequacy of information, disclosure, and reporting requirements and procedures; the effects of variations between accounting, financial reporting and other business practices of American and foreign investors on foreign investment activities in the United States; and means whereby information on foreign investment activities can be kept current.

The Committee believes that it is necessary to improve data collection procedures in order that the United States Government be provided with the most accurate information possible. For this reason, the Committee is particularly interested in the adequacy of information, disclosure, and reporting requirements and procedures. The participating Departments are urged to give special attention to this matter and to suggest possible improvements and changes and the means whereby information on foreign direct investments can be kept current.

#### Section 6

Section 6 directs the Secretary of the Treasury to conduct that part of the study relating to foreign portfolio investments. He shall—to the extent feasible—specifically consider the following: the nature, scope and magnitude of foreign portfolio investment activities in the United States; the reasons for portfolio investment in the United States; the processes and mechanisms through which portfolio investment is made, the financing methods used, and the effects of this form of investment on United States financial markets; the effects of portfolio investment on the United States balance of payments and the United States international investment position; the effect of Federal securities laws, rules, regulations, and policies on foreign portfolio investment activities in the United States; a comparison between foreign portfolio activities in the United States with information available on comparable American investment activities abroad; the adequacy of information, disclosure, and reporting requirements and procedures; and means whereby information and statistics on foreign portfolio investment activities can be kept current.

As in the case of foreign direct investment activities, the committee believes that the study should include a review of data collection procedures to ensure that information will be kept as current as possible and that the Federal government is receiving information in

quantity and detail sufficient to enable the appropriate agencies to make well-informed decisions.

#### Section 7

This section authorizes the Secretary of Commerce and the Secretary of the Treasury to obtain the services of outside consultants and to utilize the available services, equipment, personnel, and facilities of other Federal agencies. Because several items called for in the study may be more thoroughly and expeditiously studied by private organizations and individuals, it is hoped that they will be utilized when feasible and appropriate. Likewise, it is anticipated that the Departments will utilize the services of other Federal agencies which possess specialized knowledge or which compile relevant information, such as the Securities and Exchange Commission in the securities field.

#### Section 8

Section 8 directs the Secretary of Commerce and the Secretary of the Treasury to submit an interim report to the Congress 18 months after enactment of this Act and a final report not later than two and one half years after enactment, together with such recommendations as they consider appropriate.

#### Section 9

This section authorizes a sum not to exceed \$3 million to carry out the purposes of this Act. Funds appropriated pursuant to this section shall remain available until expended.

### CHANGES IN EXISTING LAW

The legislation will make no changes in existing law.

### ESTIMATED COSTS

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the committee estimates the cost of this bill to be \$3,000,000 over the two and one-half year life of the study.

### TEXT OF S. 2840, AS REPORTED

A BILL to authorize the Secretary of Commerce and the Secretary of the Treasury to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Investment Study Act of 1974".*

SEC. 2. The Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States.

SEC. 3. The Departments of Commerce and Treasury, in consultation with appropriate agencies, shall determine the definitions and limitations of direct and portfolio investment for the purposes of the study authorized in section 2 of this Act.

SEC. 4. In carrying out the study described in section 2 of this Act, the Secretary of Commerce and the Secretary of the Treasury shall, respectively and jointly as may be appropriate—

(1) identify and collect such information as may be required to carry out the study authorized in section 2 of this Act;

(2) consult with and secure information from (and where appropriate the views of) representatives of industry, the financial community, labor, agriculture, science and technology, academic institutions, public interest organizations, and such other groups as the Secretaries deem suitable; and

(3) consult and cooperate with other government agencies, Federal, State, and local, and, to the extent appropriate, with foreign governments and international organizations.

SEC. 5. The Secretary of Commerce shall carry out that part of the study authorized in section 2 of this Act relating to foreign direct investment, and shall, among other things, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, magnitude, and rate of foreign direct investment activities in the United States;

(2) survey the reasons foreign firms are undertaking direct investment in the United States;

(3) identify the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets;

(4) analyze the scope and significance of foreign direct investment in acquisitions and takeovers of existing American enterprises, the significance of such investments in the form of new facilities or joint ventures with American firms, and the effects thereof on domestic business competition;

(5) analyze the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors;

(6) analyze the effects of foreign direct investment on United States national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant American product markets;

(7) analyze the effect of foreign direct investment in terms of employment opportunities and practices and the activities and influence of foreign and American management executives employed by foreign firms;

(8) analyze the effect of Federal, regional, State or local laws, rules, regulations, controls, and policies on foreign direct investment activities in the United States;

(9) compare and contrast the foreign direct investment activities in the United States with the investment activities of American investors abroad and appraise the impact of such American activities abroad on the investment activities and policies of foreign firms in the United States;

(10) study the adequacy of information, disclosure, and reporting requirements and procedures;

(11) determine the effects of variations between accounting, financial reporting, and other business practices of American and foreign investors on foreign investment activities in the United States; and

(12) study means whereby information and statistics on foreign direct investment activities can be kept current.

SEC. 6. The Secretary of the Treasury shall carry out that part of the study authorized in section 2 of this Act relating to foreign portfolio investment, and shall, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, and magnitude of foreign investment activities in the United States;

(2) survey the reasons for foreign portfolio investment in the United States;

(3) identify the processes and mechanisms through which foreign portfolio investment is made in the United States, the financing methods used, and the effects of foreign portfolio investment on American financial markets;

(4) analyze the effects of foreign portfolio investment on the United States balance of payments and the United States international investment position;

(5) study and analyze the concentration and distribution of investment in specific United States economic sectors;

(6) study the effect of Federal securities laws, rules, regulations, and policies on foreign portfolio investment activities in the United States;

(7) compare the foreign portfolio investment activities in the United States with information available on the portfolio investment activities of American investors abroad;

(8) study the adequacy of information, disclosure, and reporting requirements and procedures; and

(9) study means whereby information and statistics on foreign portfolio investment activities can be kept current.

SEC. 7. (a) The Secretary of Commerce and the Secretary of the Treasury may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate to be fixed by the Secretaries concerned but not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services for the Department of Commerce or the Department of the Treasury in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(b) The Secretary of Commerce and the Secretary of the Treasury are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of any agency or instrumentality of the Federal Government in conjunction with the study authorized in this Act.

SEC. 8. The Secretary of Commerce and the Secretary of the Treasury shall submit to the Congress an interim report eighteen months after the date of enactment of this Act, and not later than two and one-half years after enactment of this Act, a full and complete report of the findings made under the study authorized by this Act, together with such recommendations as they consider appropriate.

SEC. 9. There is authorized to be appropriated a sum not to exceed \$3,000,000 to carry out the purposes of this Act. Any funds so appropriated shall remain available until expended.

## AGENCY COMMENTS

DEPARTMENT OF STATE,  
Washington, D.C., April 3, 1974.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of January 7 requesting the Department of State's comments on S. 2840.

The Department of State endorses the purpose of S. 2840 and believes that the study called for in the bill will improve our ability to analyze what is happening with respect to foreign, direct and portfolio investment in the United States. A full statement of the Department's position on this measure is contained in the testimony of Sidney Weintraub, Deputy Assistant Secretary for International Finance and Development, which was prepared for the hearings before the Subcommittee on Foreign Commerce and Tourism originally scheduled for February 19, 1974. Copies of Mr. Weintraub's testimony have already been submitted to the Committee. For your ease of reference, I am enclosing an additional copy with this letter.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

LINWOOD HOLTON,  
Assistant Secretary  
for Congressional Relations.

Enclosure:

Mr. Weintraub's Testimony

TESTIMONY OF SIDNEY WEINTRAUB, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL FINANCE AND DEVELOPMENT—MARCH 7, 1974

Mr. Chairman, I welcome this opportunity to testify on S. 2840. The Department of State endorses the purpose of the bill and believes that it will improve our ability to analyze what is happening with regard to foreign investment in the United States.

Other witnesses here today have presented the position of their agencies on the specifics of the bill, particularly with regard to the scope and timing of the study called for and the resources authorized to perform it. The primary concern of the Department of State is the foreign policy implications of the measure. On this score, we do have one concern, that this measure, and Administration support for it, not be misinterpreted here or abroad as signaling a move toward a more restrictive U.S. Government policy toward foreign investment.

Even if more protectionist policies were not in fact adopted, such a misinterpretation could have an unfortunate negative impact on the attractiveness of the United States to foreign investors. Inflows of portfolio capital from abroad are a significant element in maintaining the strength of our financial markets. As an indication of their importance, the latest figures we have show that the value of foreign portfolio investment in this country exceeds that of our portfolio holdings abroad \$45 billion to \$34 billion. Foreign direct investment in the

United States, which had a book value of more than \$14 billion at the end of 1972, was less than 1/4 of the value of our direct investment abroad, but it, too, is believed to have a small but positive impact on our economy.

Actual abandonment of our traditional hospitality toward foreign investment would make it difficult for us to oppose new restrictions by others against our own economically much more significant foreign investment. New restrictions on foreign investment here also might well place us in violation of our obligations under our bilateral friendship, commerce, and navigation and amity and economic relations treaties and the OECD Capital Movements Code. Most important, a restrictive policy on inward investment would bring into question our commitment to the type of open world economy which we are trying to achieve through the international monetary and trade negotiations and the recent Washington international energy conference.

I do not want to dwell in this statement on the philosophy behind our liberal foreign investment policy or on our efforts since the 1930s to forge a more open world economy, since other witnesses have done and will do so. I will, of course, be glad to answer any questions that the Committee might have on these matters, for which we in the Department of State have a deep concern.

We note that S. 2840 asks for a study and comparison of the investment policies of other nations. The Department of State is keenly aware of this need and last year, as an initial effort, the Office of Investment Affairs, which is under my supervision, put together a compendium of reports on the climate for U.S. investment from our Embassies and Consulates in over 100 countries. I am submitting copies of this compendium for the record. I might add that we have instituted new guidelines for our overseas posts to report on investment matters on a continuing basis.

Given the rapid growth of foreign investment, the very limited coverage of existing international agreements in this field and the domestic pressures in a number of countries to adopt more restrictive policies, this Administration has placed a high priority on sitting down with other countries and international organizations to determine where we go from here. We were pleased that S. 2840 endorses such consultation and cooperation. The wide national and regional differences in economic development, legal systems and other factors make it premature, in our judgment, to try to develop a single, new international forum for handling the whole range of foreign investment issues. It is better, we think, to tackle investment issues individually and in the forum judged most appropriate to the purpose.

We have taken a leading role in the review of investment issues now underway in the OECD under the general coordination of the Executive Committee in Special Session, called the XCSS. In the 5 meetings which the XCSS has held since December 1972 and in two ancillary meetings of government investments experts, we have pressed for the establishment of consultation machinery which would give any member country a forum to air its concerns about the investment policies, either restrictive or encouraging, of another member country. We hope that the consultation machinery will include a review procedure. Considerable progress has been made in this direction. Much hard work remains to be done over the coming months.

Of great importance, too, is the work going forward in the OECD multinational corporations. This involves highly technical problems, for the most part. Because the complexity of these issues is not widely realized, more heat than light is often shed in public discussions. The various specialized committees of the OECD are intensifying their analyses of these problems, with the results to serve as a well-documented and well-studied basis for considering the extent to which we can in fact develop balanced guidelines for the relationships of governments and companies, and the avoidance of disputes which spill over into our foreign relations.

We recognize, of course, that some foreign investment matters will have to be treated in broader forums which include the developing countries and the Socialist states. Accordingly, we are cooperating in the studies of foreign investment and multinational corporation activities currently going forward in the various member organizations of the United Nations family. These studies may make valuable contributions to the state of our knowledge on foreign investment matters. Several of our major companies are cooperating with the UN studies because they realize, as we do, that international benchmarks could contribute greatly to a stable atmosphere in which to do business. This government is likewise cooperating with these United Nations efforts and through our participation is trying to make certain that the studies are objective and supportive of the development of an international consensus on foreign investment.

A major problem in all these international initiatives is the lack of adequate data on foreign investment. S. 2840 will help to fill this void by enabling us to shed more light on the magnitude and activities of foreign investment in the United States.

I shall be pleased to try to answer any questions which you might have.

DEPARTMENT OF JUSTICE,  
Washington, D.C., March 8, 1974.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 2840, a bill "to authorize the Secretary of Commerce to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes."

The bill provides for a two-year study, for an interim report by the Secretary of Commerce to the Congress one year after enactment, and for a final report within two years after enactment. In the words of Senator Inouye, the sponsor of the bill, it would be "a new benchmark study" on the effects of foreign direct and portfolio investment in the United States. According to Section 4(b), the Secretary of Commerce would be authorized and directed to consult with other Federal agencies with special expertise.

Section 3 specifies that the Secretary of Commerce should review, survey and identify a variety of facts and determine, analyze and appraise the effects thereof on a number of things, e.g., on the American financial markets, on specific geographical areas, on the United States balance of payments, etc.

The only conceivable interest of the Department of Justice in a statistical survey of the extent of foreign direct investment in the United States would be as it might relate to enforcement of the anti-trust laws, in particular, Section 7 of the Clayton Act, which prohibits mergers which eliminate actual or potential competition in the domestic or foreign commerce of the United States. However, nothing in the legislative history or language of the antitrust laws indicates that they were intended to be applied any more stringently against acquisitions by foreign firms than acquisitions by domestic companies. Also, it is clear and well settled that Clayton Act, Section 7 must be applied in light of the specific facts of a particular merger in a particular industry.

For these reasons, it appears that a new statistical survey of the extent of foreign investment in the United States would have little or no relevance to the work of the Antitrust Division of the Department of Justice.

The Department of Justice has no objection to the enactment of this legislation.

MALCOLM D. HAWK.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,

Washington, D.C., February 26, 1974.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 2840, 93d Congress, a bill "To authorize the Secretary of Commerce to conduct a study of foreign direct and portfolio investment in the United States and for other purposes."

The Department of Defense endorses the purposes of the bill to examine the scope and impact of foreign investment in the United States and to compare and contrast such activities with the activities of American investors abroad.

Accordingly, the Department of Defense interposes no objection to the enactment of S. 2840.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER,  
Acting General Counsel.

# Ninety-third Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four*

### An Act

To authorize the Secretary of Commerce and the Secretary of the Treasury to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Investment Study Act of 1974".*

SEC. 2. The Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States.

SEC. 3. The Departments of Commerce and Treasury, in consultation with appropriate agencies, shall determine the definitions and limitations of direct and portfolio investments for the purposes of the study authorized in section 2 of this Act.

SEC. 4. In carrying out the study described in section 2 of this Act, the Secretary of Commerce and the Secretary of the Treasury shall, respectively and jointly as may be appropriate—

(1) identify and collect such information as may be required to carry out the study authorized in section 2 of this Act;

(2) consult with and secure information from (and where appropriate the views of) representatives of industry, the financial community, labor, agriculture, science and technology, academic institutions, public interest organizations, and such other groups as the Secretaries deem suitable; and

(3) consult and cooperate with other government agencies, Federal, State, and local, and, to the extent appropriate, with foreign governments and international organizations.

SEC. 5. The Secretary of Commerce shall carry out that part of the study authorized in section 2 of this Act relating to foreign direct investment, and shall, among other things, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, magnitude, and rate of foreign direct investment activities in the United States;

(2) survey the reasons foreign firms are undertaking direct investment in the United States;

(3) identify the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets;

(4) analyze the scope and significance of foreign direct investment in acquisitions and takeovers of existing American enterprises, the significance of such investments in the form of new facilities or joint ventures with American firms, and the effects thereof on domestic business competition;

(5) analyze the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors;

(6) analyze the effects of foreign direct investment on United States national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant American product markets;

(7) analyze the effect of foreign direct investment in terms of employment opportunities and practices and the activities and influence of foreign and American management executives employed by foreign firms;

(8) analyze the effect of Federal, regional, State, and local laws, rules, regulations, controls, and policies on foreign direct investment activities in the United States;

(9) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign direct investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(10) compare and contrast the foreign direct investment activities in the United States with the investment activities of American investors abroad and appraise the impact of such American activities abroad on the investment activities and policies of foreign firms in the United States;

(11) study the adequacy of information, disclosure, and reporting requirements and procedures;

(12) determine the effects of variations between accounting, financial reporting, and other business practices of American and foreign investors on foreign investment activities in the United States; and

(13) study and recommend means whereby information and statistics on foreign direct investment activities can be kept current.

SEC. 6. The Secretary of the Treasury shall carry out that part of the study authorized in section 2 of this Act relating to foreign portfolio investment, and shall, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, and magnitude of foreign portfolio investment activities in the United States;

(2) survey the reasons for foreign portfolio investment in the United States;

(3) identify the processes and mechanisms through which foreign portfolio investment is made in the United States, the financing methods used, and the effects of foreign portfolio investment on American financial markets;

(4) analyze the effects of foreign portfolio investment on the United States balance of payments and the United States international investment position;

(5) study and analyze the concentration and distribution of foreign portfolio investment in specific United States economic sectors;

(6) study the effect of Federal securities laws, rules, regulations, and policies on foreign portfolio investment activities in the United States;

(7) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign portfolio investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(8) compare the foreign portfolio investment activities in the United States with information available on the portfolio investment activities of American investors abroad;

(9) study adequacy of information, disclosures, and reporting requirements and procedures; and

(10) study and recommend means whereby information and statistics on foreign portfolio investment activities can be kept current.

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## POWERS

SEC. 7. (a) The Secretary of Commerce and the Secretary of the Treasury may each by regulation establish whatever rules each deems necessary to carry out each of his functions under this Act.

(b) Each such Secretary may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which such Secretary determines is germane to his functions in the foreign direct investment and foreign portfolio investment studies to be conducted pursuant to this Act; and

(2) to furnish under oath any report containing whatever information such Secretary determines is necessary to carry out his functions in such studies. Whenever an order under clause (2) of this subsection requires a person to produce information which can be specifically identified as being part of the records of its customers, the Secretary shall, upon being provided the names and addresses of such customers, send a notice to such customers that information from their records will be disclosed pursuant to this Act; *Provided*, That this requirement shall not apply when such person is directly involved in the ownership or management of assets for the customer as nominee, agent, partner, fiduciary, trustee, or in a similar relationship.

The authority of each Secretary under this subsection shall expire on the date provided under section 10 of this Act for the Secretary of Commerce and the Secretary of the Treasury to submit a full and complete report to the Congress.

(c) In addition to the Secretary of Commerce and the Secretary of the Treasury, the only individuals who may have access to information furnished under subsection (b) (2) are those sworn employees, including consultants, of the Department of Commerce or Department of the Treasury designated by the Secretary of either such Department. Neither such Secretary nor any such employee may—

(1) use any information furnished under subsection (b) (2) except for analytical or statistical purposes within the United States Government; or

(2) publish, or make available to any other person in any manner, any such information in a manner that the information furnished under subsection (b) (2) by any person can be specifically identified, except for the purposes of a proceeding under section 8.

Such Secretaries may exchange any such information furnished under subsection (b) (2) in order to prevent any duplication or omission in the studies conducted by each such Secretary pursuant to this Act.

(d) Except for the requirement under subsection (b) (2), no agency of the United States or employee thereof may compel (1) the Secretary of Commerce or the Secretary of the Treasury, (2) any individual designated by either such Secretary under the first sentence of subsection (c), or (3) any person which maintained or furnished any report under subsection (b), to submit any such report or constituent part thereof to that agency or any other agency of the United States. Without the prior written consent of the person which maintained or furnished any report under subsection (b) and without the prior written consent of the customer, where the person maintained or furnished any such report which included information identifiable as being

## S. 2840—4

derived from the records of such customer, such report or any such constituent part may not be produced for any judicial or administrative proceeding, except for a proceeding under section 8(b) of this Act.

## ENFORCEMENT

SEC. 8. (a) Whoever fails to furnish any information required pursuant to the authority of this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act may be assessed a civil penalty not exceeding \$10,000 in a proceeding brought under subsection (b) of this section.

(b) Whenever it appears to either the Secretary of the Treasury or the Secretary of Commerce that any person has failed to furnish any information required pursuant to the provisions of this Act, whether required to be furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act, such Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule, regulation, order, or instruction, and upon a proper showing by such Secretary of the relevance to the purposes of the Act of such rule, regulation, order, or instruction, a permanent or temporary injunction or restraining order shall be granted without bond, and such person may also be subject to the civil penalty provided in subsection (a) of this section if the judge finds that such penalty is necessary to obtain compliance with such injunction or restraining order.

(c) Whoever willfully fails to submit any information required pursuant to this Act, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act shall, upon conviction, be fined not more than \$10,000 or, if a natural person, may be imprisoned for not more than one year or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SEC. 9. (a) The Secretary of Commerce and the Secretary of the Treasury may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate to be fixed by the Secretaries concerned but not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services for the Department of Commerce or the Department of the Treasury in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(b) The Secretary of Commerce and the Secretary of the Treasury are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of any agency or instrumentality of the Federal Government in conjunction with the study authorized in this Act.

SEC. 10. The Secretary of Commerce and the Secretary of the Treasury shall submit to the Congress an interim report twelve months after the date of enactment of this Act, and not later than one and one-



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half years after enactment of this Act, a full and complete report of the findings made under the study authorized by this Act, together with such recommendations as they consider appropriate.

SEC. 11. There is authorized to be appropriated a sum not to exceed \$3,000,000 to carry out the purposes of this Act. Any funds so appropriated shall remain available until expended.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

Office of the White House Press Secretary

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THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

It gives me great pleasure to have signed S. 2840, the "Foreign Investment Study Act of 1974."

A recent study by the executive branch concluded that the available information on the activities of foreign investors in the United States is inadequate. The bill I sign into law today will go a long way toward remedying that deficiency.

This bill provides for the Departments of Commerce and the Treasury to undertake comprehensive studies of foreign direct and portfolio investment in the United States. Under the authority provided by the bill they will (1) conduct "benchmark" surveys of all existing foreign direct and portfolio investment in the U. S. ; (2) analyze the effects of foreign investment on the U. S. economy; (3) review our existing reporting requirements that apply to foreign investors; and (4) make recommendations on means for us to keep our information and statistics on foreign investment current. These surveys will be conducted early next year and cover data for 1974; an interim report of the results will be submitted to the Congress twelve months after the date of enactment of this act and a full and complete report, together with appropriate recommendations, within eighteen months of the date of enactment.

When this study is completed, we will be in a position to know better how to conduct ongoing monitoring of foreign investment activity in the United States. Earlier, this Administration had opposed new reporting systems which would have lacked the benefits of the information which will be generated by the actions under S. 2840. We are not opposed to keeping a watch on foreign investment, but we do want to do it in the most efficient and helpful way, with the aid of the greatest possible amount of data.

As I sign this act, I reaffirm that it is intended to gather information only. It is not in any sense a sign of a change in America's traditional open door policy towards foreign investment. We continue to believe that the operation of free market forces will direct worldwide investment flows in the most productive way. Therefore my Administration will oppose any new restriction on foreign investment in the United States except where absolutely necessary on national security grounds or to protect an essential national interest.

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III

October 17, 1974

Dear Mr. Director:

The following bills were received at the White House on October 17th:

S.J. Res. 236 ✓	S. 2840 ✓	H.R. 7768	H.R. 14225
S.J. Res. 250 ✓	S. 3007 ✓	H.R. 7780	H.R. 14597 ✓
S.J. Res. 251 ✓	S. 3234 ✓	H.R. 11221	H.R. 15148 ✓
S. 355 ✓	S. 3473 ✓	H.R. 11251 ✓	H.R. 15427 ✓
S. 605 ✓	S. 3698 ✓	H.R. 11452 ✓	H.R. 15540 ✓
S. 628 ✓	S. 3792	H.R. 11830 ✓	H.R. 15643 ✓
S. 1411 ✓	S. 3838 ✓	H.R. 12035 ✓	H.R. 16857 ✓
S. 1412 ✓	S. 3979 ✓	H.R. 12281	H.R. 17027 ✓
S. 1769 ✓	H.R. 6524	H.R. 13561 ✓	
S. 2348 ✓	H.R. 6642 ✓	H.R. 13631 ✓	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C.