## The Committee on Energy and Commerce

## Memorandum

May 20, 2013

To: Members of the Subcommittee on Commerce, Manufacturing, and Trade

From: Majority Committee Staff

Re: Subcommittee Markup of "H.R. 2052, the Global Investment in American Jobs Act of 2013"

---

On Wednesday, May 22, 2013, at 4:00 p.m., in Room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will meet in an open markup session for opening statements regarding H.R. 2052, the "Global Investment in American Jobs Act of 2013." The Subcommittee will reconvene on Thursday, May 23, 2013, at 9:00 a.m. for purposes of considering the legislation.

### I. BACKGROUND

Foreign direct investment (FDI) is generally defined as capital invested in a country by a business or persons domiciled outside the country. The U.S. is the largest investor (by way of U.S. companies) in foreign countries and, until 2012, was the largest recipient of foreign investment. In 2012, according to the Organization for Economic Co-operation and Development (OECD), China surpassed the U.S. in attracting foreign investment through the first three quarters of 2012 ($170 billion to $104 billion, respectively).[1] More importantly, the U.S. share of inward global investment has been declining in recent years, raising concern about our continued ability to attract FDI as we compete with other nations.

The reason for concern regarding the diminishing attractiveness of the U.S. is that foreign investment benefits our economy in a number of essential ways, including: job creation, growth, and trade. Across the economy, U.S. subsidiaries of foreign-based companies directly employ over 5 million Americans, with over 40 percent of those jobs in manufacturing.[2] Additionally, U.S. subsidiaries of companies with headquarters outside the U.S. paid their workers 34 percent more than the U.S. private sector average. Finally, those companies are responsible for 21 percent of U.S. exports.[3]

In furtherance of its goal to achieve "the highest sustainable economic growth and employment," the OECD created an FDI Restrictiveness Index (FDI Index) that can be used to evaluate and compare the receptivity of different nations to foreign investment. The index score is an average of the 22 sectors analyzed and is based on four measures: (1) foreign equity restrictions; (2) screening and prior approval requirements; (3) restrictions on key personnel; and (4) other restrictions on the operation

---

[1] "FDI in Figures: January 2013", http://www.oecd.org/daf/inv/FDI%20in%20figures.pdf, accessed April 3, 2013.
[2] Fact Sheet: International Investment, http://www.ustr.gov/sites/default/files/The%20Facts%20on%20International%20Investment.pdf accessed April 8, 2013.
[3] Id. at p.2.

of foreign-controlled entities. The FDI Index can be used to measure relative restrictiveness of countries, changes in restrictiveness over time, and the effect of FDI liberalization on FDI inflows. Notably, in its most recent review in 2012, the U.S. ranked 34th out of the 55 OECD countries with an index score that is more restrictive than the average OECD country score, including such notable countries as France, United Kingdom, and Germany. In other words, according to the OECD, it is easier for foreign companies to invest in these European countries than it is to invest in the U.S. Additionally, although the index calculation methodology was tweaked since the previous review, the U.S. score remained virtually unchanged from the previous review in 2006, while other nations have substantially lowered barriers to foreign direct investment during the same period.[4]

*Federal Efforts to Improve Inbound FDI*

The Administration recognizes the importance of FDI to the U.S. economy. To that end, the President issued an Executive Order in 2011 to create the "SelectUSA" initiative,[5] which is housed within the International Trade Administration of the Department of Commerce. According to the SelectUSA website, the Administration recognized "that the competitiveness and job-generating ability of a nation is determined by its desirability as a place for business to operate," and created the SelectUSA initiative to focus attention on the benefits of investing in the U.S. and to promote the U.S. as the premier destination for global investment.[6]

## II. LEGISLATIVE HISTORY

On May 20, 2013, Representatives Terry, Schakowsky, Roskam, and Barrow introduced H.R. 2052, the "Global Investment in American Jobs Act of 2013." The Subcommittee held a legislative hearing on a draft bill on April 18, 2013. The Subcommittee received testimony from the Honorable Francisco J. Sanchez, Undersecretary of Commerce for International Trade at the U.S. Department of Commerce; Nancy L. McLernon, President & CEO of the Organization for International Investment; Matthew J. Slaughter, Associate Dean for Faculty of the Tuck School of Business at Dartmouth University; Dr, Martin Baily, Senior Fellow of Economic Studies and the Bernard L. Schwartz Chair in Economic Policy Development at the Brookings Institution; Linda Dempsey, Vice President of International Economic Affairs for the National Association of Manufacturers; and Celeste Drake, Trade and Globalization Policy Specialist for the AFL-CIO.

The 112th Congress considered a substantially similar bill, H.R. 5910, which bypassed Committee consideration and went to straight to the floor for a vote under suspension of the Rules on September 19, 2012; the measure passed by voice vote. The Senate failed to act on either H.R. 5910 or its companion bill, S. 3274.

## III. SUMMARY OF H.R. 2052, THE "GLOBAL INVESTMENT IN AMERICAN JOBS ACT OF 2013"

As a result of bipartisan negotiations, the text of H.R. 2052, the "Global Investment in American Jobs Act of 2013" is altered from the text considered at the April 18, 2013, legislative hearing. Substantive changes are highlighted in bold text below.

---

[4] Blanka Kalinova, Angel Palerm and Stephen Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 Update", *OECD Working Papers on International Investment, No. 2010/3*, OECD Investment Division, www.oecd.org/daf/investment/workingpapers.
[5] http://www.whitehouse.gov/the-press-office/2011/06/15/executive-order-selectusa-initiative.
[6] http://selectusa.commerce.gov/about-selectusa.

*Sec 1. – Short Title* - Provides the Act may be cited as the Global Investment in American Jobs Act of 2013.

*Sec. 2 – Findings* – Provides relevant statistical data regarding the importance of FDI in the U.S. ***Statistics and data are updated from prior text.***

*Sec. 3 - Sense of Congress* – Recognizes the importance to the economy of attracting inbound FDI, and establishes that it is a top national priority to enhance the global competitiveness, prosperity, and security of the U.S. Additionally, this section stipulates that policies regarding FDI should reflect national security interests. ***Specifies that U.S. efforts to attract FDI should be consistent with efforts to maintain and improve the domestic standard of living.***

*Sec. 4 – Foreign Direct Investment Review*

Subsection (a) requires the Secretary of Commerce to conduct an interagency review, in coordination with the Federal Interagency Investment Working Group and the heads of the other relevant Federal departments and agencies, of the global competitiveness of the United States in attracting foreign direct investment.

Subsection (b) establishes ***nine*** specific matters to be reviewed: the current economic impact of FDI in the U.S., ***including its costs and benefits***; trends in global cross-border flows; Federal government policies that are closely linked to the ability of the U.S. to attract and retain FDI; ***FDI as compared to domestic direct investment; FDI in the form of new, greenfield investment as compared to FDI in the form of merger and acquisitions; the unique challenges posed by FDI by State-owned enterprises***; Federal government efforts to improve the investment climate; initiatives by State, regional, and local governments to attract FDI; and initiatives by other countries in order to identify best practices.

Subsection (c) excludes laws or policies relating to the Committee on Foreign Investment in the United States (CFIUS) from the interagency review.

Subsection (d) requires the Secretary to allow input from the public on matters that should be covered by the review prior to conducting the review. ***The Secretary must also publish notice of the findings after conducting the review and provide an opportunity for public comment***.

Subsection (e) requires a report to Congress, ***not later than one year after enactment***, on the findings of the review, together with recommendations for increasing the U.S.' global competitiveness in attracting global investment without weakening labor, consumer, ***financial***, or environmental protections.

---

*Please contact Brian McCullough, Gib Mullan, or Shannon Taylor of the Committee staff at (202) 225-2927 with questions.*