

117TH CONGRESS
1ST SESSION

S. 3032

To require certain manufactured goods introduced for sale in the United States to have a domestic value content of more than 50 percent, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2021

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require certain manufactured goods introduced for sale in the United States to have a domestic value content of more than 50 percent, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Make in America to
5 Sell in America Act of 2021”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) Excessive globalization has been a disaster
2 for United States workers in the manufacturing sec-
3 tor.

4 (2) The erosion of the domestic industrial base
5 of the United States is the result of the lack of ade-
6 quate protection for both domestic industry and
7 United States workers from import competition.

8 (3) Since 2001, approximately 60,000 factories
9 have shuttered in the United States.

10 (4) The COVID–19 pandemic revealed the de-
11 gree to which the United States is dependent on the
12 People’s Republic of China for certain critical manu-
13 factured goods.

14 (5) The United States currently mandates do-
15 mestic sourcing by requiring certain government
16 agencies to purchase only goods that are produced in
17 whole or in part in the United States.

18 (b) SENSE OF CONGRESS.—It is the sense of Con-
19 gress that a targeted regime of local content requirements
20 across manufactured goods sold in the United States
21 should be deployed to boost domestic industry, repatriate
22 supply chains, and nurture infant industries.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the United States International Trade Com-
3 mission.

4 (2) COVERED GOOD.—The term “covered good”
5 means a good identified by the Secretary of Com-
6 merce in the report required by section 4.

7 (3) INTRODUCE FOR SALE.—The term “intro-
8 duce for sale”, with respect to a good, means to im-
9 port the good into the United States or produce the
10 good for consumption in the United States.

11 **SEC. 4. IDENTIFICATION OF CRITICAL GOODS.**

12 (a) IN GENERAL.—Not later than one year after the
13 date of the enactment of this Act, and annually thereafter,
14 the Secretary of Commerce, in consultation with the Sec-
15 retary of Defense, shall submit to Congress and make
16 available to the public a report that identifies finished
17 goods and intermediate goods the domestic production of
18 which is critical for the protection of the industrial base
19 in the United States or for the national security of the
20 United States.

21 (b) CONSIDERATIONS.—In considering whether the
22 production of a good is critical for the protection of the
23 industrial base or for the national security of the United
24 States, the Secretary of Commerce may consider—

1 (1) the relative lack of the domestic production
 2 of the good compared to domestic demand for the
 3 good;

4 (2) the extent to which the global supply chain
 5 of the good is vulnerable; and

6 (3) the employment effects of restoring or es-
 7 tablishing production of the good in the United
 8 States.

9 **SEC. 5. MINIMUM DOMESTIC CONTENT REQUIREMENT.**

10 (a) IN GENERAL.—Except as provided in subsection
 11 (c) or (d), a covered good may not be introduced for sale
 12 in the United States unless the domestic value content of
 13 the good is more than 50 percent.

14 (b) DOMESTIC VALUE CONTENT.—

15 (1) CALCULATION.—The domestic value content
 16 of a covered good may be calculated on the basis of
 17 the following transaction value method:

$$\text{DVC} = \frac{\text{TV} - \text{VNM}}{\text{TV}} \times 100$$

18 (2) DEFINITIONS.—In this subsection:

19 (A) DVC.—The term “DVC” means the
 20 domestic value content of the good, expressed
 21 as a percentage.

22 (B) ORIGINATING GOOD; ORIGINATING MA-
 23 TERIAL.—

1 (i) IN GENERAL.—The terms “origi-
2 nating good” and “originating material”
3 mean a good or material, as the case may
4 be—

5 (I) wholly obtained or produced
6 entirely in the United States; or

7 (II) substantially transformed in
8 the United States from a good or ma-
9 terial that is not wholly the growth,
10 product, or manufacture of the United
11 States.

12 (ii) REMANUFACTURED GOODS.—For
13 purposes of determining whether a re-
14 manufactured good is an originating good,
15 a recovered material derived in the United
16 States shall be treated as an originating
17 material if the material is used or con-
18 sumed in the production of, and incorpora-
19 tion into, the manufactured good.

20 (C) NONORIGINATING GOOD; NONORIGI-
21 NATING MATERIAL.—The terms “nonoriginating
22 good” and “nonoriginating material” mean a
23 good or material, as the case may be, that does
24 not qualify as originating under subparagraph
25 (B).

1 (D) TV.—The term “TV” means the
2 transaction value of the good, adjusted to ex-
3 clude any costs incurred in the international
4 shipment of the good.

5 (E) VNM.—The term “VNM” means the
6 value of nonoriginating goods or nonoriginating
7 materials used by the producer in the produc-
8 tion of the good.

9 (3) VALUE OF NONORIGINATING MATERIALS.—
10 For purposes of calculating the domestic value con-
11 tent of a good under this subsection, the value of
12 nonoriginating materials used by the producer in the
13 production of the good shall not include the value of
14 nonoriginating materials used or consumed to
15 produce originating materials that are subsequently
16 used or consumed in the production of the good.

17 (c) EXCEPTIONS.—The prohibition under subsection
18 (a) does not apply with respect to—

19 (1) used goods; or

20 (2) goods introduced for sale in the United
21 States by any person with annual revenue of less
22 than \$5,000,000.

23 (d) WAIVER.—

1 (1) IN GENERAL.—The President may waive
2 the application of subsection (a) with respect to a
3 covered good if the President—

4 (A) determines that—

5 (i) the covered good is not available
6 for sale in the United States in a manner
7 that meets the minimum domestic content
8 requirement under subsection (a);

9 (ii) the development of domestic pro-
10 duction of the covered good to meet the
11 consumptive demand of the United States
12 is substantially time-intensive or capital-in-
13 tensive compared with other covered goods;
14 or

15 (iii) a delay in the application of the
16 requirement under subsection (a) is critical
17 for the national security of the United
18 States; and

19 (B) submits to Congress and makes avail-
20 able to the public a report on the reasons for
21 the waiver.

22 (2) EFFECTIVE PERIOD.—A waiver issued
23 under paragraph (1) with respect to a covered good
24 terminates on the date that is 3 years after the date

1 on which the President submits the report required
2 by paragraph (1)(B) with respect to the waiver.

3 (3) PROHIBITION ON RENEWAL.—A waiver
4 issued under paragraph (1) may not be renewed.

5 (4) BRIEFINGS REQUIRED.—Not less frequently
6 than annually, the President shall brief the Com-
7 mittee on Finance of the Senate and the Committee
8 on Ways and Means of the House of Representatives
9 with respect to the waivers issued under paragraph
10 (1) and the determinations made under paragraph
11 (1)(A) with respect to those waivers during the pre-
12 ceding year.

13 (5) PUBLIC LIST.—Not less frequently than an-
14 nually, the President shall make available to the
15 public a list of all waivers issued under paragraph
16 (1) during the preceding year.

17 (e) REGULATIONS.—The Secretary of Commerce, in
18 consultation with the Commissioner of U.S. Customs and
19 Border Protection, shall prescribe regulations and guid-
20 ance to carry out this section, including with respect to
21 the calculation and applicability of the minimum domestic
22 content requirement under subsection (a).

23 **SEC. 6. ENFORCEMENT.**

24 (a) IN GENERAL.—

1 (1) PENALTIES.—If the Secretary of Commerce
2 determines that a person introduces for sale, or
3 causes to be introduced for sale, a covered good in
4 the United States in violation of section 4(a), that
5 person shall be liable for a civil penalty not to exceed
6 the greater of—

7 (A) the amount that is twice the total
8 transaction value of the good; or

9 (B) \$5,000,000.

10 (2) CONSIDERATIONS.—In making a determina-
11 tion under paragraph (1) with respect to an alleged
12 violation of section 4(a), the Secretary of Commerce
13 shall consider the findings of the Commission pursu-
14 ant to an investigation conducted under subsection
15 (b) with respect to the alleged violation.

16 (b) INVESTIGATIONS BY COMMISSION.—

17 (1) PETITIONS.—The Commission may initiate
18 an investigation into an alleged violation of section
19 4(a) with respect to a covered good upon the filing
20 of a petition by a domestic producer of the covered
21 good or the Secretary of Commerce.

22 (2) NOTIFICATION.—Upon receipt of a petition
23 filed under paragraph (1), the Commission shall no-
24 tify the person alleged to have violated section 4(a)

1 of the petition and the allegations included in the
2 petition.

3 (3) INITIATION OF INVESTIGATION.—Not later
4 than 20 days after receiving a petition filed under
5 paragraph (1), the Commission shall—

6 (A) after examining, on the basis of
7 sources readily available, the accuracy and ade-
8 quacy of the allegations included in the petition,
9 determine whether the petition—

10 (i) alleges the elements necessary for
11 the imposition of a penalty under sub-
12 section (a)(1); and

13 (ii) contains information reasonably
14 available to the petitioner supporting the
15 allegations;

16 (B) determine whether the covered good
17 that is the subject of the petition is covered by
18 a waiver issued under section 4(c); and

19 (C) if the determination under subpara-
20 graph (A) is affirmative and the determination
21 under subparagraph (B) is negative, initiate an
22 investigation.

23 (4) FINDINGS.—

24 (A) IN GENERAL.—Not later than 60 days
25 after initiating an investigation under para-

1 graph (3)(C), and after soliciting public com-
2 ments, soliciting evidence from the parties, and
3 examining other relevant sources, the Commis-
4 sion shall make a finding with respect to wheth-
5 er, based on a preponderance of evidence, the
6 person that is the subject of the investigation
7 has violated section 4(a).

8 (B) NOTIFICATIONS.—If the finding of the
9 Commission under subparagraph (A) is affirma-
10 tive, the Commission shall—

11 (i) notify all parties to the investiga-
12 tion of the finding; and

13 (ii) make available to the public the
14 facts and conclusions upon which the find-
15 ing was based.

16 (5) WITHDRAWAL OF PETITIONS.—The Com-
17 mission may terminate an investigation initiated
18 under paragraph (3), after notice to all parties to
19 the investigation, if the petition filed under para-
20 graph (1) is withdrawn by the petitioner.

21 (6) STAFF.—The Commission may hire suffi-
22 cient staff to carry out investigations under this sub-
23 section.

1 (7) REGULATIONS.—The Commission may pre-
2 scribe regulations and guidance as necessary to
3 carry out this subsection.

4 **SEC. 7. APPLICABILITY.**

5 The provisions of this Act apply with respect to goods
6 introduced for sale in the United States on and after the
7 date that is 3 years after the date of the enactment of
8 this Act.

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