117TH CONGRESS
1ST SESSION

S. ______

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

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

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Make in America to Sell in America Act of 2021''.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:

(1) Excessive globalization has been a disaster for United States workers in the manufacturing sector.

(2) The erosion of the domestic industrial base of the United States is the result of the lack of adequate protection for both domestic industry and United States workers from import competition.

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

(4) The COVID–19 pandemic revealed the degree to which the United States is dependent on the People's Republic of China for certain critical manufactured goods.

(5) The United States currently mandates domestic sourcing by requiring certain government agencies to purchase only goods that are produced in whole or in part in the United States.

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

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the United States International Trade Commission.

(2) COVERED GOOD.—The term ''covered goods'' means a good identified by the Secretary of Commerce in the report required by section 4.

(3) INTRODUCE FOR SALE.—The term ''introduce for sale'', with respect to a good, means to import the good into the United States or produce the good for consumption in the United States.

SEC. 4. IDENTIFICATION OF CRITICAL GOODS.

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

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

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

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

(3) the employment effects of restoring or establishing production of the good in the United States.

SEC. 5. MINIMUM DOMESTIC CONTENT REQUIREMENT.

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

(b) DOMESTIC VALUE CONTENT.—

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

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

(2) DEFINITIONS.—In this subsection:

(A) DVC.—The term "DVC" means the domestic value content of the good, expressed as a percentage.

(B) ORIGINATING GOOD; ORIGINATING MATERIAL.—

(i) IN GENERAL.—The terms ''originating good'' and ''originating material'' mean a good or material, as the case may be—

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

(II) substantially transformed in the United States from a good or material that is not wholly the growth, product, or manufacture of the United States.

(ii) REMANUFACTURED GOODS.—For purposes of determining whether a remanufactured good is an originating good, a recovered material derived in the United States shall be treated as an originating material if the material is used or consumed in the production of, and incorporation into, the manufactured good.

(C) NONORIGINATING GOOD; NONORIGINATING MATERIAL.—The terms ''nonoriginating good'' and ''nonoriginating material'' mean a good or material, as the case may be, that does not qualify as originating under subparagraph (B).

(D) TV.—The term ''TV'' means the transaction value of the good, adjusted to exclude any costs incurred in the international shipment of the good.

(E) VNM.—The term ''VNM'' means the value of nonoriginating goods or nonoriginating materials used by the producer in the production of the good.

(3) VALUE OF NONORIGINATING MATERIALS.—For purposes of calculating the domestic value content of a good under this subsection, the value of nonoriginating materials used by the producer in the production of the good shall not include the value of nonoriginating materials used or consumed to produce originating materials that are subsequently used or consumed in the production of the good.

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

(1) used goods; or

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

(d) WAIVER.—

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

(A) determines that—

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

(ii) the development of domestic production of the covered good to meet the consumptive demand of the United States is substantially time-intensive or capital-intensive compared with other covered goods; or

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

(B) submits to Congress and makes available to the public a report on the reasons for the waiver.

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

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

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

(4) BRIEFINGS REQUIRED.—Not less frequently than annually, the President shall brief the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the waivers issued under paragraph (1) and the determinations made under paragraph (1)(A) with respect to those waivers during the preceding year.

(5) PUBLIC LIST.—Not less frequently than annually, the President shall make available to the public a list of all waivers issued under paragraph (1) during the preceding year.

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

SEC. 6. ENFORCEMENT.

(a) IN GENERAL.—

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

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

(B) $5,000,000.

(2) CONSIDERATIONS.—In making a determination under paragraph (1) with respect to an alleged violation of section 4(a), the Secretary of Commerce shall consider the findings of the Commission pursuant to an investigation conducted under subsection (b) with respect to the alleged violation.

(b) INVESTIGATIONS BY COMMISSION.—

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

(2) NOTIFICATION.—Upon receipt of a petition filed under paragraph (1), the Commission shall notify the person alleged to have violated section 4(a)

of the petition and the allegations included in the petition.

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

(A) after examining, on the basis of sources readily available, the accuracy and adequacy of the allegations included in the petition, determine whether the petition—

(i) alleges the elements necessary for the imposition of a penalty under subsection (a)(1); and

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

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

(C) if the determination under subparagraph (A) is affirmative and the determination under subparagraph (B) is negative, initiate an investigation.

(4) FINDINGS.—

(A) IN GENERAL.—Not later than 60 days after initiating an investigation under paragraph (3)(C), and after soliciting public comments, soliciting evidence from the parties, and examining other relevant sources, the Commission shall make a finding with respect to whether, based on a preponderance of evidence, the person that is the subject of the investigation has violated section 4(a).

(B) NOTIFICATIONS.—If the finding of the Commission under subparagraph (A) is affirmative, the Commission shall—

(i) notify all parties to the investigation of the finding; and

(ii) make available to the public the facts and conclusions upon which the finding was based.

(5) WITHDRAWAL OF PETITIONS.—The Commission may terminate an investigation initiated under paragraph (3), after notice to all parties to the investigation, if the petition filed under paragraph (1) is withdrawn by the petitioner.

(6) STAFF.—The Commission may hire sufficient staff to carry out investigations under this subsection.

(7) REGULATIONS.—The Commission may prescribe regulations and guidance as necessary to carry out this subsection.

SEC. 7. APPLICABILITY.

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