

Appendix C: Defense Offsets Disclosure Act of 1999

Public Law 106-113

Title XII Subtitle D--Defense Offsets Disclosure

SEC. 1241. SHORT TITLE.

This subtitle may be cited as the "Defense Offsets Disclosure Act of 1999".

SEC. 1242. FINDINGS AND DECLARATION OF POLICY.

a) Findings.--Congress makes the following findings:

(1) A fair business environment is necessary to advance international trade, economic stability, and development worldwide, is beneficial for American workers and businesses, and is in the United States national interest.

(2) In some cases, mandated offset requirements can cause economic distortions in international defense trade and undermine fairness and competitiveness, and may cause particular harm to small- and medium-sized businesses.

(3) The use of offsets may lead to increasing dependence on foreign suppliers for the production of United States weapons systems.

(4) The offset demands required by some purchasing countries, including some close allies of the United States, equal or exceed the value of the base contract they are intended to offset, mitigating much of the potential economic benefit of the exports.

(5) Offset demands often unduly distort the prices of defense contracts.

(6) In some cases, United States contractors are required to provide indirect offsets which can negatively impact nondefense industrial sectors.

(7) Unilateral efforts by the United States to prohibit offsets may be impractical in the current era of globalization and would severely hinder the competitiveness of the United States defense industry in the global market.

(8) The development of global standards to manage and restrict demands for offsets would enhance United States efforts to mitigate the negative impact of offsets.

b) Declaration of Policy.--It is the policy of the United States to monitor the use of offsets in international defense trade, to promote fairness in such trade, and to ensure that foreign participation in the production of United States weapons systems does not harm the economy of the United States.

SEC. 1243. DEFINITIONS.

In this subtitle:

(1) Appropriate congressional committees.--The term "appropriate congressional committees" means--

(A) the Committee on Foreign Relations of the Senate; and

(B) the Committee on International Relations of the House of Representatives.

(2) G-8.--The term "G-8" means the group consisting of France, Germany, Japan, the United Kingdom, the United States, Canada, Italy, and Russia established to facilitate economic cooperation among the eight major economic powers.

(3) Offset.--The term "offset" means the entire range of industrial and commercial benefits provided to foreign governments as an inducement or condition to purchase military goods or services, including benefits such as coproduction, licensed production, subcontracting, technology transfer, in-country procurement, marketing and financial assistance, and joint ventures.

(4) Transatlantic economic partnership.--The term "Transatlantic Economic Partnership" means the joint commitment made by the United States and the European Union to reinforce their close relationship through an initiative involving the intensification and extension of multilateral and bilateral cooperation and common actions in the areas of trade and investment.

(5) Wassenaar arrangement.--The term "Wassenaar Arrangement" means the multilateral export control regime in which the United States participates that seeks to promote transparency and responsibility with regard to transfers of conventional armaments and sensitive dual-use items.

(6) World trade organization.--The term "World Trade Organization" means the organization established pursuant to the WTO Agreement.

(7) WTO agreement.--The term "WTO Agreement" means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

SEC. 1244. SENSE OF CONGRESS.

It is the sense of Congress that--

(1) the executive branch should pursue efforts to address trade fairness by establishing reasonable, business-friendly standards for the use of offsets in international business transactions between the United States and its trading partners and competitors;

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(2) the Secretary of Defense, the Secretary of State, the Secretary of Commerce, and the United States Trade Representative, or their designees, should raise with other industrialized nations at every suitable venue the need for transparency and reasonable standards to govern the role of offsets in international defense trade;

(3) the United States Government should enter into discussions regarding the establishment of multilateral standards for the use of offsets in international defense trade through the appropriate multilateral fora, including such organizations as the Transatlantic Economic Partnership, the Wassenaar Arrangement, the G-8, and the World Trade Organization; and

(4) the United States Government, in entering into the discussions described in paragraph (3), should take into account the distortions produced by the provision of other benefits and subsidies, such as export financing, by various countries to support defense trade.

SEC. 1245. REPORTING OF OFFSET AGREEMENTS.

(a) Initial Reporting of Offset Agreements.--

(1) Government-to-government sales.--Section 36(b)(1) of the Arms Export Control Act (22 U.S.C. 2776(b)(1)) is amended in subparagraph (C) of the fifth sentence, by striking "and a description" and all that follows and inserting "and a description of any offset agreement with respect to such sale;".

(2) Commercial sales.--Section 36(c)(1) of the Arms Export Control Act (22 U.S.C. 2776(c)(1)) is amended in the second sentence, by striking "if known on the date of transmittal of such certification)" and inserting "and a description of any such offset agreement".

(b) Confidentiality of Information Relating to Offset Agreements.--Section 36 of the Arms Export Control Act (22 U.S.C. 2776) is amended--

(1) by redesignating the second subsection (e) (as added by section 155 of Public Law 104-164) as subsection (f); and

(2) by adding at the end the following new subsection:

"(g) Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c))."

SEC. 1246. EXPANDED PROHIBITION ON INCENTIVE PAYMENTS.

(a) In General.--Section 39A(a) of the Arms Export Control Act (22 U.S.C. 2779a(a)) is amended--

(1) by inserting "or licensed" after "sold"; and

(2) by inserting "or export" after "sale".

(b) Definition of United States Person.--Section 39A(d)(3)(B)(ii) of the Arms Export Control Act (22 U.S.C. 2779a(d)(3)(B)(ii)) is amended by inserting "or by an entity described in clause (i)" after "subparagraph (A)".

SEC. 1247. ESTABLISHMENT OF REVIEW COMMISSION.

(a) In General.--There is established a National Commission on the Use of Offsets in Defense Trade (in this section referred to as the "Commission") to address all aspects of the use of offsets in international defense trade.

(b) Commission Membership.--Not later than 120 days after the date of enactment of this Act, the President, with the concurrence of the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, shall appoint 11 individuals to serve as members of the Commission. Commission membership shall include--

(1) representatives from the private sector, including--

(A) one each from--

(i) a labor organization,

(ii) a United States defense manufacturing company dependent on foreign sales,

(iii) a United States company dependent on foreign sales that is not a defense manufacturer, and

(iv) a United States company that specializes in international investment, and

(B) two members from academia with widely recognized expertise in international economics; and

(2) five members from the executive branch, including a member from--

- (A) the Office of Management and Budget,
- (B) the Department of Commerce,
- (C) the Department of Defense,
- (D) the Department of State, and
- (E) the Department of Labor.

The member designated from the Office of Management and Budget shall serve as Chairperson of the Commission. The President shall ensure that the Commission is nonpartisan and that the full range of perspectives on the subject of offsets in the defense industry is adequately represented.

(c) Duties.--The Commission shall be responsible for reviewing and reporting on--

- (1) the full range of current practices by foreign governments in requiring offsets in purchasing agreements and the extent and nature of offsets offered by United States and foreign defense industry contractors;
- (2) the impact of the use of offsets on defense subcontractors and nondefense industrial sectors affected by indirect offsets; and
- (3) the role of offsets, both direct and indirect, on domestic industry stability, United States trade competitiveness and national security.

(d) Commission Report.--Not later than 12 months after the Commission is established, the Commission shall submit a report to the appropriate congressional committees. In addition to the items described under subsection (c), the report shall include--

- (1) an analysis of--
 - (A) the collateral impact of offsets on industry sectors that may be different than those of the contractor providing the offsets, including estimates of contracts and jobs lost as well as an assessment of damage to industrial sectors;
 - (B) the role of offsets with respect to competitiveness of the United States defense industry in international trade and the potential damage to the ability of United States contractors to compete if offsets were prohibited or limited; and
 - (C) the impact on United States national security, and upon United States nonproliferation objectives, of the use of coproduction, subcontracting, and technology transfer with foreign governments or companies that results from fulfilling offset requirements, with particular emphasis on the question of dependency upon foreign nations for the supply of critical components or technology;
- (2) proposals for unilateral, bilateral, or multilateral measures aimed at reducing any detrimental effects of offsets; and
- (3) an identification of the appropriate executive branch agencies to be responsible for monitoring the use of offsets in international defense trade.

(e) Period of Appointment; Vacancies.--Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(f) Initial Meeting.--Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(g) Meetings.--The Commission shall meet at the call of the Chairman.

(h) Commission Personnel Matters.--

(1) Compensation of members.--Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) Travel expenses.--The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) Staff.--

(A) In general.--The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) Compensation.--The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) Detail of government employees.--Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) Procurement of temporary and intermittent services.--The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(i) Termination.--The Commission shall terminate 30 days after the transmission of the report from the President as mandated in section 1248(b).

SEC. 1248. MULTILATERAL STRATEGY TO ADDRESS OFFSETS.

(a) In General.--The President shall initiate a review to determine the feasibility of establishing, and the most effective means of negotiating, a multilateral treaty on standards for the use of offsets in international defense trade, with a goal of limiting all offset transactions that are considered injurious to the economy of the United States.

(b) Report Required.--Not later than 90 days after the date on which the Commission submits the report required under section 1247(d), the President shall submit to the appropriate congressional committees a report containing the President's determination pursuant to subsection

(a), and, if the President determines a multilateral treaty is feasible or desirable, a strategy for United States negotiation of such a treaty. One year after the date the report is submitted under the preceding sentence, and annually thereafter for 5 years, the President shall submit to the appropriate congressional committees a report detailing the progress toward reaching such a treaty.

(c) Required Information.--The report required by subsection (b) shall include--

(1) a description of the United States efforts to pursue multilateral negotiations on standards for the use of offsets in international defense trade;

(2) an evaluation of existing multilateral fora as appropriate venues for establishing such negotiations;

(3) a description on a country-by-country basis of any United States efforts to engage in negotiations to establish bilateral treaties or agreements with respect to the use of offsets in international defense trade; and

(4) an evaluation on a country-by-country basis of any foreign government efforts to address the use of offsets in international defense trade.

(d) Comptroller General Review.--The Comptroller General of the United States shall monitor and periodically report to Congress on the progress in reaching a multilateral treaty.