

106TH CONGRESS
1ST SESSION

S. 1373

To increase monitoring of the use of offsets in international defense trade.

IN THE SENATE OF THE UNITED STATES

JULY 15, 1999

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To increase monitoring of the use of offsets in international defense trade.

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 “Defense Offsets Dislo-
5 sure Act of 1999”.

6 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

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

9 (1) A fair business environment is necessary to
10 advance international trade, economic stability, and
11 development worldwide, is beneficial for American

1 workers and businesses, and is in the United States
2 national interest.

3 (2) Mandated offset requirements can cause
4 economic distortions in international defense trade
5 and sabotage fairness and competitiveness, and may
6 cause particular harm to small- and medium-sized
7 businesses.

8 (3) The stated goal of supporting the national
9 security needs of allied countries by assisting their
10 defense industries through the use of offsets may no
11 longer be sufficient justification for the practice.

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

15 (5) The offset demands required by some pur-
16 chasing countries, including some of the United
17 States closest allies, equal or exceed the value of the
18 base contract they are intended to offset, mitigating
19 much of the potential economic benefit of the ex-
20 ports.

21 (6) Offset demands often unduly inflate the
22 prices of defense contracts.

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

1 (8) Unilateral efforts by the United States to
2 prohibit offsets may be impractical in the current
3 era of globalization and would severely hinder the
4 competitiveness of the United States defense indus-
5 try in the global market.

6 (9) The development of global standards to
7 manage and restrict demands for offsets would en-
8 hance United States efforts to mitigate the negative
9 impact of offsets.

10 (b) **DECLARATION OF POLICY.**—Congress declares
11 that the United States policy is to develop a workable sys-
12 tem to monitor the use of offsets in the defense industry,
13 to promote fairness in international trade, and to ensure
14 an appropriate level of foreign participation in production
15 of United States weapons systems.

16 **SEC. 3. SENSE OF CONGRESS.**

17 It is the sense of Congress that—

18 (1) the executive branch should pursue efforts
19 to address trade fairness by making transparent and
20 establishing standards for the use of offsets in inter-
21 national business transactions among United States
22 trading partners and competitors;

23 (2) the Secretary of State, the Secretary of
24 Commerce, and the United States Trade Represent-
25 ative, or their designees, should raise the need for

1 transparency and other standards bilaterally with
2 other industrialized nations at every suitable venue;
3 and

4 (3) the United States Government should enter
5 into discussions regarding the establishment of mul-
6 tilateral standards for the control of the use of off-
7 sets in international defense trade through the ap-
8 propriate multilateral fora, including such organiza-
9 tions as the Transatlantic Economic Partnership,
10 the Wassenaar Arrangement, the G–8, and the
11 World Trade Organization.

12 **SEC. 4. DEFINITIONS.**

13 In this Act:

14 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
15 **TEES.**—The term “appropriate congressional com-
16 mittees” means—

17 (A) the Committee on Foreign Relations of
18 the Senate;

19 (B) the Committee on International Rela-
20 tions of the House of Representatives;

21 (C) the Committees on Commerce of the
22 Senate and the House of Representatives; and

23 (D) the Committees on Armed Services of
24 the Senate and the House of Representatives.

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

6 (3) OFFSET.—The term “offset” means the en-
7 tire range of industrial and commercial benefits pro-
8 vided to foreign governments as an inducement or
9 condition to purchase military goods or services, in-
10 cluding benefits such as coproduction, licensed pro-
11 duction, subcontracting, technology transfer, in-
12 country procurement, marketing and financial assist-
13 ance, and joint ventures.

14 (4) TRANSATLANTIC ECONOMIC PARTNER-
15 SHIP.—The term “Transatlantic Economic Partner-
16 ship” means the joint commitment made by the
17 United States and the European Union to reinforce
18 their close relationship through an initiative involv-
19 ing the intensification and extension of multilateral
20 and bilateral cooperation and common actions in the
21 areas of trade and investment.

22 (5) WASSENAAR ARRANGEMENT.—The term
23 “Wassenaar Arrangement” means the multilateral
24 export control regime in which the United States
25 participates that seeks to promote transparency and

1 responsibility with regard to transfers of conven-
2 tional armaments and sensitive dual-use items.

3 (6) WORLD TRADE ORGANIZATION.—The term
4 “World Trade Organization” means the organization
5 established pursuant to the WTO Agreement.

6 (7) WTO AGREEMENT.—The term “WTO
7 Agreement” means the Agreement Establishing The
8 World Trade Organization entered into on April 15,
9 1994.

10 **SEC. 5. REPORTING OF OFFSET AGREEMENTS.**

11 (a) INITIAL REPORTING OF OFFSET AGREEMENTS.—

12 (1) GOVERNMENT-TO-GOVERNMENT SALES.—
13 Section 36(b)(1) of the Arms Export Control Act
14 (22 U.S.C. 2776(b)(1)) is amended—

15 (A) in the fourth sentence, by striking “(if
16 known on the date of transmittal of such cer-
17 tification)” and inserting “and a description of
18 any offset agreement, including the dollar
19 amount of the agreement”; and

20 (B) by inserting after the fourth sentence
21 the following: “Such description shall to the ex-
22 tent possible be available to the public.”.

23 (2) COMMERCIAL SALES.—Section 36(c)(1) of
24 the Arms Export Control Act (22 U.S.C.
25 2776(c)(1)) is amended—

1 (A) in the second sentence, by striking “(if
2 known on the date of transmittal of such cer-
3 tification)” and inserting “and a description of
4 any offset agreement, including the dollar
5 amount of the agreement”; and

6 (B) by inserting after the fourth sentence
7 the following: “Such description shall to the ex-
8 tent possible be available to the public.”.

9 (b) **REPORTING UPON COMPLETION OF OFFSET OB-**
10 **LIGATIONS.**—Not later than 90 days after the fulfillment
11 of an offset obligation made in conjunction with trans-
12 actions reported in section 36 (b) or (c) of the Arms Ex-
13 port Control Act, the President shall submit a report to
14 Congress identifying all measures taken to fulfill the offset
15 obligations related to the sale. The report shall contain
16 all the information required in section 36 (b) and (c) of
17 the Arms Export Control Act, as well as any additional
18 information that may not have been available at the time
19 of the initial notification.

20 **SEC. 6. EXPANDED PROHIBITION ON INCENTIVE PAY-**
21 **MENTS.**

22 (a) **IN GENERAL.**—Section 39A(a) of the Arms Ex-
23 port Control Act (22 U.S.C. 2779a(a)) is amended—

24 (1) by inserting “or licensed” after “sold”; and

25 (2) by inserting “or export” after “sale”.

1 (b) DEFINITION OF UNITED STATES PERSON.—Sec-
2 tion 39A(d)(3)(B)(ii) of the Arms Export Control Act (22
3 U.S.C. 2779a(d)(3)(B)(ii)) is amended by inserting “or by
4 an entity described in clause (i)” after “subparagraph
5 (A)”.

6 **SEC. 7. MULTILATERAL STRATEGY TO COMBAT OFFSETS.**

7 (a) IN GENERAL.—The President shall initiate a re-
8 view to determine the feasibility of establishing, and the
9 most effective means of negotiating, multilateral agree-
10 ments on standards for the use of offsets in international
11 defense trade, with a goal of limiting all offset trans-
12 actions.

13 (b) REPORT REQUIRED.—Not later than 90 days
14 after the date of enactment of this Act, the President shall
15 submit to the appropriate congressional committees a re-
16 port containing a strategy for United States negotiations
17 of multilateral agreements with designated foreign coun-
18 tries that provide standards for the use of offsets with re-
19 spect to the sale or licensing of defense articles or defense
20 services under the Arms Export Control Act (22 U.S.C.
21 2751 et seq.), and a timetable for entering into such multi-
22 lateral agreements. One year after the date the report is
23 submitted under the preceding sentence, and annually
24 thereafter for 5 years, the President shall submit to the
25 appropriate congressional committees a report detailing

1 the progress toward reaching such multilateral agree-
2 ments.

3 (c) REQUIRED INFORMATION.—The report required
4 by subsection (b) shall include—

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

8 (2) an evaluation of existing multilateral fora as
9 appropriate venues for establishing such negotia-
10 tions;

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

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

18 (d) COMPTROLLER GENERAL REVIEW.—The Comp-
19 troller General of the United States shall monitor and pe-
20 riodically report to Congress on the progress in reaching
21 a multilateral agreement.

22 **SEC. 8. ESTABLISHMENT OF REVIEW COMMISSION.**

23 (a) IN GENERAL.—There is established a National
24 Commission on the Use of Offsets in Defense Trade (in
25 this section referred to as the “Commission”) to address

1 all aspects of the use of offsets in international defense
2 trade.

3 (b) COMMISSION MEMBERSHIP.—Not later than 60
4 days after the date of enactment of this Act, the Presi-
5 dent, in consultation with Congress, shall appoint 10 peo-
6 ple to serve as members of the Commission. Commission
7 membership shall include four representatives from the
8 private sector, including one each from a labor organiza-
9 tion, the defense manufacturing sector, academia, and an
10 organization devoted to arms control; four from the execu-
11 tive branch, including one each from the Office of Manage-
12 ment and Budget, and the Departments of Commerce, De-
13 fense, and State; and two from the legislative branch, one
14 each from among members of the Senate and the House
15 of Representatives. The member designated from the Of-
16 fice of Management and Budget will serve as Chairperson
17 of the Commission. The President shall ensure that the
18 Commission is nonpartisan and that the full range of per-
19 spectives on the subject of offsets in the defense industry
20 is adequately represented.

21 (c) DUTIES.—The Commission shall be responsible
22 for reviewing and reporting on—

23 (1) the full range of current practices by foreign
24 governments requiring offsets in purchasing agree-
25 ments and the extent and nature of offsets offered

1 by United States and foreign defense industry con-
2 tractors;

3 (2) the impact of the use of offsets on defense
4 subcontractors and nondefense industrial sectors af-
5 fected by indirect offsets; and

6 (3) the role of offsets, both direct and indirect,
7 on domestic industry stability, United States trade
8 competitiveness, national security, and the
9 globalization of the weapons industry.

10 (d) COMMISSION REPORT.—Not later than 12
11 months after the Commission is established, the Commis-
12 sion shall submit a report to the appropriate congressional
13 committees. The report shall include—

14 (1) an analysis of—

15 (A) the collateral impact of offsets on in-
16 dustry sectors that may be different than those
17 of the contractor providing the offsets, includ-
18 ing estimates of contracts and jobs lost as well
19 as an assessment of damage to industrial sec-
20 tors;

21 (B) the role of offsets with respect to com-
22 petitiveness of the United States defense indus-
23 try in international trade and the potential
24 damage to the ability of United States contrac-
25 tors to compete if offsets were prohibited;

1 (C) the impact on United States national
2 security of the use of coproduction, subcon-
3 tracting, and technology transfer with foreign
4 governments or companies that result from ful-
5 filling offset requirements; and

6 (D) the potential negative effects of the in-
7 creasing globalization of the weapons industry
8 through the use of offsets and the resultant im-
9 plications for the United States ability to limit
10 the proliferation of weapons and weapons tech-
11 nology;

12 (2) proposals for unilateral, bilateral, or multi-
13 lateral measures aimed at reducing the detrimental
14 effects of offsets; and

15 (3) an identification of the appropriate execu-
16 tive branch agencies to be responsible for monitoring
17 the use of offsets in international defense trade.

18 (e) TERMINATION.—The Commission shall terminate
19 not later than the date that is 3 years after the date of
20 enactment of this Act.

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