

106TH CONGRESS  
1ST SESSION

# H. R. 2652

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1999

Mr. TIERNEY introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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:

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

6           (2) In some cases, mandated offset require-  
7           ments can cause economic distortions in inter-  
8           national defense trade and undermine fairness and  
9           competitiveness, and may cause particular harm to  
10          small- and medium-sized businesses.

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

14          (4) The offset demands required by some pur-  
15          chasing countries, including some close allies of the  
16          United States, equal or exceed the value of the base  
17          contract they are intended to offset, mitigating much  
18          of the potential economic benefit of the exports.

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

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

24          (7) Unilateral efforts by the United States to  
25          prohibit offsets may be impractical in the current

1 era of globalization and would severely hinder the  
2 competitiveness of the United States defense indus-  
3 try in the global market.

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

8 (b) DECLARATION OF POLICY.—It is the policy of the  
9 United States to develop a system for monitoring the use  
10 of offsets in international defense trade, to promote fair-  
11 ness in such trade, and to ensure that foreign participa-  
12 tion in the production of United States weapons systems  
13 does not harm the economy of the United States.

14 **SEC. 3. SENSE OF CONGRESS.**

15 It is the sense of Congress that—

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

22 (2) the Secretary of State, the Secretary of  
23 Commerce, and the United States Trade Represent-  
24 ative, or their designees, should raise with other in-  
25 dustrialized nations at every suitable venue the need

1 for transparency and reasonable standards to govern  
2 the role of offsets in international defense trade; and

3 (3) the United States Government should enter  
4 into discussions regarding the establishment of mul-  
5 tilateral standards for the use of offsets in inter-  
6 national defense trade through the appropriate mul-  
7 tilateral fora, including such organizations as the  
8 Transatlantic Economic Partnership, the Wassenaar  
9 Arrangement, the G–8, and the World Trade Orga-  
10 nization.

11 **SEC. 4. DEFINITIONS.**

12 In this title:

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

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

18 (B) the Committee on International Rela-  
19 tions of the House of Representatives.

20 (2) G–8.—The term “G–8” means the group  
21 consisting of France, Germany, Japan, the United  
22 Kingdom, the United States, Canada, Italy, and  
23 Russia established to facilitate economic cooperation  
24 among the eight major economic powers.

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

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

17          (5) WASSENAAR ARRANGEMENT.—The term  
18          “Wassenaar Arrangement” means the multilateral  
19          export control regime in which the United States  
20          participates that seeks to promote transparency and  
21          responsibility with regard to transfers of conven-  
22          tional armaments and sensitive dual-use items.

23          (6) WORLD TRADE ORGANIZATION.—The term  
24          “World Trade Organization” means the organization  
25          established pursuant to the WTO Agreement.

1           (7) WTO AGREEMENT.—The term “WTO  
2 Agreement” means the Agreement Establishing The  
3 World Trade Organization entered into on April 15,  
4 1994.

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

6 (a) INITIAL REPORTING OF OFFSET AGREEMENTS.—

7           (1) GOVERNMENT-TO-GOVERNMENT SALES.—  
8 Section 36(b)(1) of the Arms Export Control Act  
9 (22 U.S.C. 2776(b)(1)) is amended in the fourth  
10 sentence, by striking “(if known on the date of  
11 transmittal of such certification)” and inserting  
12 “and a description of any offset agreement, includ-  
13 ing the dollar amount of the agreement”.

14           (2) COMMERCIAL SALES.—Section 36(c)(1) of  
15 the Arms Export Control Act (22 U.S.C.  
16 2776(c)(1)) is amended in the second sentence, by  
17 striking “(if known on the date of transmittal of  
18 such certification)” and inserting “and a description  
19 of any offset agreement, including the dollar amount  
20 of the agreement”.

21 (b) REPORT ON OFFSET OBLIGATIONS.—Not later  
22 than January 1, 2000, and annually thereafter, the Presi-  
23 dent shall submit a report to Congress identifying all con-  
24 tracts or agreements entered into in order to fulfill any  
25 offset obligations made in conjunction with transactions

1 reported in section 36 (b) or (c) of the Arms Export Con-  
2 trol Act. The report shall contain all the information re-  
3 quired in section 36 (b) and (c) of the Arms Export Con-  
4 trol Act, as well as any additional information that may  
5 not have been available at the time of the initial notifica-  
6 tion.

7 **SEC. 6. EXPANDED PROHIBITION ON INCENTIVE PAY-**  
8 **MENTS.**

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

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

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

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

18 **SEC. 7. ESTABLISHMENT OF REVIEW COMMISSION.**

19 (a) IN GENERAL.—There is established a National  
20 Commission on the Use of Offsets in Defense Trade (in  
21 this section referred to as the “Commission”) to address  
22 all aspects of the use of offsets in international defense  
23 trade.

24 (b) COMMISSION MEMBERSHIP.—Not later than 60  
25 days after the date of enactment of this Act, the Presi-

1 dent, with the concurrence of the Majority and Minority  
2 Leaders of the Senate and the Speaker and Minority  
3 Leader of the House of Representatives, shall appoint 10  
4 people to serve as members of the Commission. Commis-  
5 sion membership shall include—

6 (1) representatives from the private sector,  
7 including—

8 (A) one each from—

9 (i) a labor organization,

10 (ii) a United States defense manufac-  
11 turing company dependent on foreign  
12 sales,

13 (iii) a United States company depend-  
14 ent on foreign sales that is not a defense  
15 manufacturer, and

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

18 (B) two members from academia with  
19 widely recognized expertise in international eco-  
20 nomics; and

21 (2) four members from the executive branch, in-  
22 cluding a member from—

23 (A) the Office of Management and Budget,

24 (B) the Department of Commerce,

25 (C) the Department of Defense, and

1 (D) the Department of State.

2 The member designated from the Office of Management  
3 and Budget shall serve as Chairperson of the Commission.  
4 The President shall ensure that the Commission is non-  
5 partisan and that the full range of perspectives on the sub-  
6 ject of offsets in the defense industry is adequately rep-  
7 resented.

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

10 (1) the full range of current practices by foreign  
11 governments requiring offsets in purchasing agree-  
12 ments and the extent and nature of offsets offered  
13 by United States and foreign defense industry con-  
14 tractors;

15 (2) the impact of the use of offsets on defense  
16 subcontractors and nondefense industrial sectors af-  
17 fected by indirect offsets; and

18 (3) the role of offsets, both direct and indirect,  
19 on domestic industry stability, United States trade  
20 competitiveness and national security.

21 (d) COMMISSION REPORT.—Not later than 12  
22 months after the Commission is established, the Commis-  
23 sion shall submit a report to the appropriate congressional  
24 committees. In addition to the items described under sub-  
25 section (c), the report shall include—

1 (1) an analysis of—

2 (A) the collateral impact of offsets on in-  
3 dustry sectors that may be different than those  
4 of the contractor providing the offsets, includ-  
5 ing estimates of contracts and jobs lost as well  
6 as an assessment of damage to industrial sec-  
7 tors;

8 (B) the role of offsets with respect to com-  
9 petitiveness of the United States defense indus-  
10 try in international trade and the potential  
11 damage to the ability of United States contrac-  
12 tors to compete if offsets were prohibited or  
13 limited; and

14 (C) the impact on United States national  
15 security, and upon United States nonprolifera-  
16 tion objectives, of the use of coproduction, sub-  
17 contracting, and technology transfer with for-  
18 eign governments or companies that result from  
19 fulfilling offset requirements with particular  
20 emphasis on the question of dependency upon  
21 foreign nations for the supply of critical compo-  
22 nents or technology;

23 (2) proposals for unilateral, bilateral, or multi-  
24 lateral measures aimed at reducing any detrimental  
25 effects of offsets; and

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

4           (e) PERIOD OF APPOINTMENT; VACANCIES.—Mem-  
5           bers shall be appointed for the life of the Commission. Any  
6           vacancy in the Commission shall not affect its powers, but  
7           shall be filled in the same manner as the original appoint-  
8           ment.

9           (f) INITIAL MEETING.—Not later than 30 days after  
10          the date on which all members of the Commission have  
11          been appointed, the Commission shall hold its first meet-  
12          ing.

13          (g) MEETINGS.—The Commission shall meet at the  
14          call of the Chairman.

15          (h) COMMISSION PERSONNEL MATTERS.—

16                 (1) COMPENSATION OF MEMBERS.—Each mem-  
17                 ber of the Commission who is not an officer or em-  
18                 ployee of the Federal Government shall be com-  
19                 pensated at a rate equal to the daily equivalent of  
20                 the annual rate of basic pay prescribed for level IV  
21                 of the Executive Schedule under section 5315 of title  
22                 5, United States Code, for each day (including travel  
23                 time) during which such member is engaged in the  
24                 performance of the duties of the Commission. All  
25                 members of the Commission who are officers or em-

1        ployees of the United States shall serve without com-  
2        pensation in addition to that received for their serv-  
3        ices as officers or employees of the United States.

4            (2) TRAVEL EXPENSES.—The members of the  
5        Commission shall be allowed travel expenses, includ-  
6        ing per diem in lieu of subsistence, at rates author-  
7        ized for employees of agencies under subchapter I of  
8        chapter 57 of title 5, United States Code, while  
9        away from their homes or regular places of business  
10       in the performance of services for the Commission.

11           (3) STAFF.—

12            (A) IN GENERAL.—The Chairman of the  
13        Commission may, without regard to the civil  
14        service laws and regulations, appoint and termi-  
15        nate an executive director and such other addi-  
16        tional personnel as may be necessary to enable  
17        the Commission to perform its duties. The em-  
18        ployment of an executive director shall be sub-  
19        ject to confirmation by the Commission.

20            (B) COMPENSATION.—The Chairman of  
21        the Commission may fix the compensation of  
22        the executive director and other personnel with-  
23        out regard to the provisions of chapter 51 and  
24        subchapter III of chapter 53 of title 5, United  
25        States Code, relating to classification of posi-

1           tions and General Schedule pay rates, except  
2           that the rate of pay for the executive director  
3           and other personnel may not exceed the rate  
4           payable for level V of the Executive Schedule  
5           under section 5316 of such title.

6           (4) **DETAIL OF GOVERNMENT EMPLOYEES.**—  
7           Any Federal Government employee may be detailed  
8           to the Commission without reimbursement, and such  
9           detail shall be without interruption or loss of civil  
10          service status or privilege.

11          (5) **PROCUREMENT OF TEMPORARY AND INTER-**  
12          **MITTENT SERVICES.**—The Chairman of the Commis-  
13          sion may procure temporary and intermittent serv-  
14          ices under section 3109(b) of title 5, United States  
15          Code, at rates for individuals which do not exceed  
16          the daily equivalent of the annual rate of basic pay  
17          prescribed for level V of the Executive Schedule  
18          under section 5316 of such title.

19          (i) **TERMINATION.**—The Commission shall terminate  
20          30 days after the transmission of the report from the  
21          President as mandated in section 8(b).

22          **SEC. 8. MULTILATERAL STRATEGY TO ADDRESS OFFSETS.**

23          (a) **IN GENERAL.**—The President shall initiate a re-  
24          view to determine the feasibility of establishing, and the  
25          most effective means of negotiating, a multilateral treaty

1 on standards for the use of offsets in international defense  
2 trade, with a goal of limiting all offset transactions that  
3 are considered injurious to the economy of the United  
4 States.

5 (b) REPORT REQUIRED.—Not later than 90 days  
6 after the date on which the Commission submits the report  
7 required under section 7(d), the President shall submit to  
8 the appropriate congressional committees a report con-  
9 taining the President’s determination pursuant to sub-  
10 section (a), and, if the President determines a multilateral  
11 treaty is feasible or desirable, a strategy for United States  
12 negotiation of such a treaty. One year after the date the  
13 report is submitted under the preceding sentence, and an-  
14 nually thereafter for 5 years, the President shall submit  
15 to the appropriate congressional committees a report de-  
16 tailing the progress toward reaching such a treaty.

17 (c) REQUIRED INFORMATION.—The report required  
18 by subsection (b) shall include—

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

22 (2) an evaluation of existing multilateral fora as  
23 appropriate venues for establishing such negotia-  
24 tions;

1           (3) a description on a country-by-country basis  
2           of any United States efforts to engage in negotia-  
3           tions to establish bilateral treaties or agreements  
4           with respect to the use of offsets in international de-  
5           fense trade; and

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

9           (d) **COMPTROLLER GENERAL REVIEW.**—The Comp-  
10          troller General of the United States shall monitor and pe-  
11          riodically report to Congress on the progress in reaching  
12          a multilateral treaty.

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