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Appendix A:

Section 7 of the Defense Production Act Reauthorization of 2003

(Public Law 108-195)

SEC. 7. REPORT ON IMPACT OF OFFSETS ON DOMESTIC CONTRACTORS AND LOWER TIER SUBCONTRACTORS.

(a) EXAMINATION OF IMPACT REQUIRED-

(1) IN GENERAL- As part of the annual report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)), the Secretary of Commerce (in this section referred to as the 'Secretary') shall—

(A) detail the number of foreign contracts involving domestic contractors that use offsets, industrial participation agreements, or similar arrangements during the preceding 5-year period;

(B) calculate the aggregate, median, and mean values of the contracts and the offsets, industrial participation agreements, and similar arrangements during the preceding 5-year period; and

(C) describe the impact of international or foreign sales of United States defense products and related offsets, industrial participation agreements, and similar arrangements on domestic prime contractors and, to the extent practicable, the first 3 tiers of domestic contractors and subcontractors during the preceding 5-year period in terms of domestic employment, including any job losses, on an annual basis.

(2) USE OF INTERNAL DOCUMENTS- To the extent that the Department of Commerce is already in possession of relevant data, the Department shall use internal documents or existing departmental records to carry out paragraph (1).

(3) INFORMATION FROM NON-FEDERAL ENTITIES-

(A) EXISTING INFORMATION- In carrying out paragraph (1), the Secretary shall only require a non-Federal entity to provide information that is available through the existing data collection and reporting systems of that non-Federal entity.

(B) FORMAT- The Secretary may require a non-Federal entity to provide information to the Secretary in the same form that is already provided to a foreign government in fulfilling an offset arrangement, industrial participation agreement, or similar arrangement.

(b) REPORT-

(1) IN GENERAL- Before the end of the 8-month period beginning on the date of enactment of this Act, the Secretary shall submit to Congress a report containing the findings and conclusions of the Secretary with regard to the examination made pursuant to subsection (a).

(2) COPIES OF REPORT- The Secretary shall also transmit copies of the report prepared under paragraph (1) to the United States Trade Representative and the interagency team established pursuant to section 123(c) of the Defense Production Act Amendments of 1992 (50 U.S.C. App. 2099 note).

(c) RESPONSIBILITIES REGARDING CONSULTATION WITH FOREIGN NATIONS-

Section 123(c) of the Defense Production Act Amendments of 1992 (50 U.S.C. App. 2099 note) is amended to read as follows:

`(c) NEGOTIATIONS-

`(1) INTERAGENCY TEAM-

`(A) IN GENERAL- It is the policy of Congress that the President shall designate a chairman of an interagency team comprised of the Secretary of Commerce, Secretary of Defense, United States Trade Representative, Secretary of Labor, and Secretary of State to consult with foreign nations on limiting the adverse effects of offsets in defense procurement without damaging the economy or the defense industrial base of the United States or United States defense production or defense preparedness.

`(B) MEETINGS- The President shall direct the interagency team to meet on a quarterly basis.

`(C) REPORTS- The President shall direct the interagency team to submit to Congress an annual report, to be included as part of the report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)), that describes the results of the consultations of the interagency team under subparagraph (A) and the meetings of the interagency team under subparagraph (B).

`(2) RECOMMENDATIONS FOR MODIFICATIONS- The interagency team shall submit to the President any recommendations for modifications of any existing or proposed memorandum of understanding between officials acting on behalf of the United States and one or more foreign countries (or any instrumentality of a foreign country) relating to—

`(A) research, development, or production of defense equipment; or

`(B) the reciprocal procurement of defense items.'.

Appendix B:

Section 309 of the Defense Production Act

THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED
(50 U.S.C. App. 2061, et seq.)

Section 309.

(a) Annual Report on Impact of Offsets--

(1) Report Required -- Not later than 18 months after the date of the enactment of the Defense Production Act Amendments of 1984, and annually thereafter, the President shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a detailed report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

(2) Duties of the Secretary of Commerce (hereafter in this subsection referred to as ‘the Secretary’ shall--

(A) prepare the report required by paragraph (1);

(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

(C) function as the President’s Executive Agent for carrying out this section.

(b) Interagency Studies and Related Data—

(1) Purpose of Report-- Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

(2) Use of Data--Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary’s responsibilities with respect to trade offset and countertrade policy development.

(c) Notice of Offset Agreements--

(1) In General--If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding \$5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

(2) Regulations--The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information.

(d) Contents of Report--

(1) In General--Each report under subsection (a) shall include--

(A) a net assessment of the elements of the industrial base and technology base covered by the report;

(B) recommendations for appropriate remedial action under the authority of this Act, or other law or regulations;

(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (c); and

(E) a summary and analysis of any bilateral and multilateral negotiations relating to the use of offsets completed during the reporting period.

(2) Alternative Findings or Recommendations--Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

(e) Utilization of Annual Report in Negotiations—

The findings and recommendations of the reports required by subsection (a), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.

Appendix C:

Department of Commerce Regulations Regarding Reporting of Offset Activity

[Federal Register: December 2, 1994]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration
15 CFR Part 701

[Docket No. 940364-4064]

Offsets in Military Exports

AGENCY: Bureau of Export

Administration, Department of Commerce.

ACTION: Final rule.

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SUMMARY: The Bureau of Export Administration (BXA) is amending the National Security Industrial Base Regulations to require U.S. firms entering into offset agreements associated with the sale of defense articles and/or defense services to foreign governments or foreign companies to provide BXA certain information regarding those agreements when they exceed \$5,000,000 in value. This new regulation is being promulgated pursuant to the Defense Production Act of 1950, as amended.

DATES: This rule is effective December 2, 1994. Annual reports must be submitted on or before June 15 of the succeeding year, except that the report for calendar year 1993 must be submitted on or before March 15, 1995.

ADDRESSES: Annual reports should be sent to Brad Botwin, Director, Strategic Analysis Division, Office of Strategic Industries and Economic Security, Attention: Offset Regulation Report, Room 3878, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Washington, DC 20230.

FOR FURTHER INFORMATION

CONTACT: Erin Finn, Offsets Program

Manager, Strategic Analysis Division, Office of Strategic Industries and Economic Security, Room 3878, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Washington, DC 20230. Telephone 202-482-2322 or Fax 202-482-5650.

SUPPLEMENTARY INFORMATION:

BACKGROUND: The Defense Production Act Amendments of 1992 amended the Defense Production Act of 1950 (the Act). The Act now requires that U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value to furnish information regarding such sales to the Secretary of Commerce (the Secretary). The Act also now requires the Secretary to establish regulations to collect this information and to protect it from public disclosure unless public disclosure is specifically authorized by the firm furnishing the information. The Act further requires the Secretary to serve as the President's executive agent in preparing an annual report to Congress on the impact of offsets on the United States.

This report will include an aggregated summary of information provided to the Secretary by U.S. industry pursuant to the regulation provided here. It will address the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

On April 26, 1994, BXA published in the Federal Register (59 FR 21678) a proposed rule on reporting of offsets in military exports designed to elicit comments, suggestions, information, or advice relative to the proposed regulation. 20 responses were received commenting on the proposed rule. The two major comments concerned the requirements to submit semi-annual

reports and to report each individual transaction undertaken to fulfill an offset commitment. The rule has been amended to address these concerns.

Rulemaking Requirements

1. This rule has been determined to be “significant” for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control number 940364-4212. Public reporting burden for this collection of information is estimated to be 5 to 60 hours per response, with an average of 10 hours, including time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. It is anticipated that the rule will primarily affect large defense contractors that engage in offset agreements with foreign governments. Moreover, the rule is not expected to pose a burden because firms engaging in offset transactions already must prepare periodic accounts of progress toward fulfillment of offset obligations for the foreign entity that is party to the offset agreement. The information to be collected pursuant to these regulations is less than that required by these foreign parties. With

regard to new offset agreements entered into, the information requested is readily available and will take a minimum amount of time to assemble by the parties involved.

List of Subjects in 15 CFR Part 701

Administration practice and procedure, Arms and munitions, Exports, Offsets, Reporting requirements.

Accordingly, the National Security Industrial Base Regulations (15 CFR parts 700-709) are amended by adding part 701 to read as follows:

PART 701--REPORTING OF OFFSETS AGREEMENTS IN SALES OF WEAPON SYSTEMS OR DEFENSE-RELATED ITEMS TO FOREIGN COUNTRIES OR FOREIGN FIRMS

Sec.

701.1 Purpose.

701.2 Definitions.

701.3 Applicability and Scope.

701.4 Procedures.

701.5 Confidentiality.

Authority: Title I, sec. 124, Pub. L 102-558, 106 Stat. 4207 (50 U.S.C App. 2099).

Sec. 701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Export Administration as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense

preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports will be submitted annually to the Congress pursuant Section 309 of the Defense Production Act of 1950, as amended.

Sec. 701.2 Definitions.

(a) Offsets--Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) Military Export Sales--Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations.

(c) Prime Contractor--A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) United States--Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) Offset Agreement--Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are "best effort" agreements or are subject to penalty clauses.

(f) Offset Transaction--Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements may include, but are not limited to, co-production, licensed production, subcontractor production, overseas investment, technology transfer countertrade, barter, counterpurchase, and buy back.

(g) Direct Offset--Contractual arrangements that involve defense articles and services referenced in the sales agreement for military exports.

(h) Indirect Offset--Contractual arrangements that involve defense goods and services unrelated to the exports referenced in the sales agreement.

Sec. 701.3 Applicability and scope.

(a) This rule applies to U.S. firms entering contracts for the sale of defense articles or defense services (as defined in the Arms Export Control Act and International Traffic in Arms Regulations) to a foreign country or foreign firm for which the contract is subject to an offset agreement exceeding \$5,000,000 in value.

(b) This rule applies to all offset transactions completed in performance of existing offset commitments since January 1, 1993 for which offset credit of \$250,000 or more has been claimed from the foreign representative, and new offset agreements entered into since that time.

Sec. 701.4 Procedures.

(a) To avoid double counting, firms should report only offset transactions for which they are directly responsible for reporting to the foreign customer (i.e., prime contractors should report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(b) Reports should be delivered to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Export Administration, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington DC 20230. The first industry reports should be submitted to the Bureau of Export Administration not later than March 15, 1995 and should cover offset transactions

completed during the calendar year 1993, as well as information regarding unfulfilled offset agreements. After this initial submission, companies should provide information once yearly not later than June 15 covering the preceding calendar year. All submissions should include a point of contact (name and telephone number) and should be by a company official authorized to provide such information.

(c) Companies may submit this information in computerized spreadsheet/database format (e.g., Lotus 1-2-3, Quattro Pro, dbase IV) using a 3.5 inch 1.44 megabyte diskette, accompanied by a printed copy.

(d) Offset Transaction Reporting.

(1) Reports should include an itemized list of offset transactions completed during the reporting period, including the following data elements (Estimates are acceptable when actual figures are unavailable; estimated figures should be followed by the letter "E"):

(i) Name of Country--Country of entity purchasing the weapon system, defense item or service subject to offset.

(ii) Name or Description of Weapon system, Defense Item, or Service Subject to Offset.

(iii) Name of Offset Fulfilling Entity--Entity fulfilling offset transaction (including first tier subcontractors).

(iv) Name of Offset Receiving Entity--Entity receiving benefits from offset transaction.

(v) Offset Credit Value--Dollar value credits claimed by fulfilling entity including any intangible factors/multipliers.

(vi) Actual Offset Value--Dollar value of the offset transaction without multipliers/intangible factors.

(vii) Description of Offset Product/Service--Short description of the type of offset (e.g., co-production, technology transfer,

subcontract activity, training, purchase, cash payment, etc.).

(viii) Broad Industry Category--Broad classification of the industry in which the offset transaction was fulfilled (e.g., aerospace, electronics, chemicals, industrial machinery, textiles, etc.). Firms may request a list of the Standard Industry Classification (SIC) codes to assist in identifying an appropriate industry category. Forward such requests to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Export Administration, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230 or Fax 202-482-5650.

(ix) Direct or Indirect Offset--Specify whether the offset transaction was direct or indirect offset.

(x) Name of Country in Which Offset was Fulfilled--United States, purchasing country, or third country.

(2) Offset transactions of the same type (same fulfilling entity, receiving entity, and offset product/service) completed during the same reporting period may be combined.

(3) Any necessary comments or explanations relating to the above information should be footnoted and supplied on separate sheets attached to the report.

(e) Reporting on Offset Agreements Entered Into. (1) In addition to the itemized list of offset transactions completed during the year as specified above, U.S. firms should provide information regarding new offset agreements entered into during the year, including the following elements:

(i) Name of Country--Country of entity purchasing the weapon system, defense item, or service subject to offset;

(ii) Name or Description of Weapon System, Defense Item, or Service Subject to Offset;

(iii) Names/Titles of Signatories to the Offset Agreement;

(iv) Value of Export Sale Subject to Offset (approximate);

(v) Total Value of the Offset Agreement;

(vi) Term of Offset Agreement (months);

(vii) Description of Performance Measures--(e.g., "Best Efforts", "Liquidated Damages", (describe)).

Sec. 701.5 Confidentiality.

(a) As provided by Sec. 309(c) of the Defense Production Act of 1950, as amended, BXA shall not publicly disclose the information it receives pursuant to this Part, unless the firm furnishing the information subsequently specifically authorizes public disclosure.

(b) Public disclosure must be authorized in writing by an official of the firm competent to make such an authorization.

(c) Nothing in this provision shall prevent the use of data aggregated from information provided pursuant to this part in the summary report to the Congress described in Sec. 701.1.

Dated: November 28, 1994.

Sue E. Eckert,
Assistant Secretary for Export
Administration.

[FR Doc. 94-29645 Filed 12-1-94; 8:45 am]
BILLING CODE 3510-DT-P

Appendix D:

Executive Order 12919

Executive Order 12919 of June 3, 1994

NATIONAL DEFENSE INDUSTRIAL RESOURCES PREPAREDNESS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (64 Stat. 798; 50 U.S.C. App. 2061, et seq.), and section 301 of title 3, United States Code, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

PART I - PURPOSE, POLICY AND IMPLEMENTATION

Section 101. Purpose. This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended ("the Act"), except for the amendments to Title III of the Act in the Energy Security Act of 1980 and telecommunication authorities under Executive Order No. 12472.

Sec. 102. Policy. The United States must have an industrial and technology base capable of meeting national defense requirements, and capable of contributing to the technological superiority of its defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to all threats to the national security of the United States.

Sec. 103. General Functions. Federal departments and agencies responsible for defense acquisition (or for industrial resources needed to support defense acquisition) shall: (a) Identify requirements for the full spectrum of national security emergencies, including military, industrial, and essential civilian demand; (b) Assess continually the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of adequate industrial resource and production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel; (c) Be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate industrial resources and production capability, including services and critical technology for national defense requirements; more (OVER) 2 (d) Improve the efficiency and responsiveness, to defense requirements, of the domestic industrial base; and (e) Foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment to enhance industrial base efficiency and responsiveness.

Sec. 104. Implementation. (a) The National Security Council is the principal forum for consideration and resolution of national security resource preparedness policy. (b) The Director, Federal Emergency Management Agency ("Director, FEMA") shall: (1) Serve as an advisor to the National Security Council on issues of national security resource preparedness and on the use of the authorities and functions delegated by this order; (2) Provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance and procedures approved by the Assistant to the President for National Security Affairs to the Federal departments and agencies under this order; (3) Establish procedures, in consultation with Federal departments and agencies assigned functions under this order, to resolve in a timely and effective manner conflicts and issues that may arise in implementing the authorities and functions delegated under this order; and (4) Report to the

President periodically concerning all program activities conducted pursuant to this order. (c) The head of every Federal department and agency assigned functions under this order shall ensure that the performance of these functions is consistent with National Security Council policy and guidelines.

PART II - PRIORITIES AND ALLOCATIONS

Sec. 201. Delegations of Priorities and Allocations. (a) The authority of the President conferred by section 101 of the Act to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads: (1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; (2) The Secretary of Energy with respect to all forms of energy; (3) The Secretary of Health and Human Services with respect to health resources; (4) The Secretary of Transportation with respect to all forms of civil transportation; more 3 (5) The Secretary of Defense with respect to water resources; and (6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials. (b) The Secretary of Commerce, in consultation with the heads of those departments and agencies specified in subsection 201(a) of this order, shall administer the Defense Priorities and Allocations System ("DPAS") regulations that will be used to implement the authority of the President conferred by section 101 of the Act as delegated to the Secretary of Commerce in subsection 201(a)(6) of this order. The Secretary of Commerce will redelegate to the Secretary of Defense, and the heads of other departments and agencies as appropriate, authority for the priority rating of contracts and orders for all materials, services, and facilities needed in support of programs approved under section 202 of this order. The Secretary of Commerce shall act as appropriate upon Special Priorities Assistance requests in a time frame consistent with the urgency of the need at hand. (c) The Director, FEMA, shall attempt to resolve issues or disagreements on priorities or allocations between Federal departments or agencies in a time frame consistent with the urgency of the issue at hand and, if not resolved, such issues will be referred to the Assistant to the President for National Security Affairs for final determination. (d) The head of each Federal department or agency assigned functions under subsection 201(a) of this order, when necessary, shall make the finding required under subsection 101(b) of the Act. This finding shall be submitted for the President's approval through the Assistant to the President for National Security Affairs. Upon such approval the head of the Federal department or agency that made the finding may use the authority of subsection 101(a) of the Act to control the general distribution of any material (including applicable services) in the civilian market. (e) The Assistant to the President for National Security Affairs is hereby delegated the authority under subsection 101(c)(3) of the Act, and will be assisted by the Director, FEMA, in ensuring the coordinated administration of the Act.

Sec. 202. Determinations. The authority delegated by section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense: (a) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities; (b) By the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and (c) By the Director, FEMA, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities. more (OVER) 4

Sec. 203. Maximizing Domestic Energy Supplies. The authority of the President to perform the functions provided by subsection 101(c) of the Act is delegated to the Secretary of Commerce, who shall redelegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials (including equipment), services, and facilities are critical and essential. The Secretary of Commerce shall make the finding described in subsection 101(c)(2)(A) of the Act that the materials (including equipment), services, or facilities are scarce, and the finding described in subsection 101(c)(2)(B) that it is necessary to use the authority provided by subsection 101(c)(1).

Sec. 204. Chemical and Biological Warfare. The authority of the President conferred by subsection 104(b) of the Act is delegated to the Secretary of Defense. This authority may not be further delegated by the Secretary.

PART III - EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Sec. 301. (a) Financing Institution Guarantees. To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, the head of each Federal department or agency engaged in procurement for the national defense (referred to as "agency head" in this part) and the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) are authorized to guarantee in whole or in part any public or private financing institution, subject to provisions of section 301 of the Act. Guarantees shall be made in consultation with the Department of the Treasury as to the terms and conditions thereof. The Director of the Office of Management and Budget ("OMB") shall be informed when such guarantees are to be made. (b) Direct Loan Guarantees. To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head is authorized to make direct loan guarantees from funds appropriated to their agency for Title III. (c) Fiscal Agent. Each Federal Reserve Bank is designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent in the making of guarantee contracts and in otherwise carrying out the purposes of section 301 of the Act. (d) Regulations. The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to prescribe regulations governing procedures, forms, rates of interest, and fees for such guarantee contracts.

Sec. 302. Loans. (a) To expedite production and deliveries or services to aid in carrying out government contracts for the procurement of industrial resources or a critical technology item for the national defense, an agency head is authorized, subject to the provisions of section 302 of the Act, to submit to the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) applications for loans. more 5 (b) To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head may make direct loans from funds appropriated to their agency for Title III. (c) After receiving a loan application and determining that financial assistance is not otherwise available on reasonable terms, the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) may make loans, subject to provisions of section 302 of the Act.

Sec. 303. Purchase Commitments. (a) In order to carry out the objectives of the Act, and subject to the provisions of section 303 thereof, an agency head is authorized to make provision for purchases of, or commitments to purchase, an industrial resource or a critical technology item for government use or resale. (b) Materials acquired under section 303 of the Act that exceed the needs of the programs under the Act may be transferred to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest.

Sec. 304. Subsidy Payments. In order to ensure the supply of raw or non-processed materials from high-cost sources, an agency head is authorized to make subsidy payments, after consultation with the Secretary of the Treasury and the Director, OMB, and subject to the provisions of section 303(c) of the Act.

Sec. 305. Determinations and Findings. When carrying out the authorities in sections 301 through 303 of this order, an agency head is authorized to make the required determinations, judgments, statements, certifications, and findings, in consultation with the Secretary of Defense, Secretary of Energy or Director, FEMA, as appropriate. The agency head shall provide a copy of the determination, judgment, statement, certification, or finding to the Director, OMB, to the Director, FEMA, and, when appropriate, to the Secretary of the Treasury.

Sec. 306. Strategic and Critical Materials. (a) The Secretary of the Interior, in consultation with the Secretary of Defense as the National Defense Stockpile Manager and subject to the provisions of section 303 of the Act, is authorized to encourage the exploration, development, and mining of critical and strategic materials and other materials. (b) An agency head is authorized, pursuant to section 303(g) of the Act, to make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources to aid the national defense. (c) An agency head is authorized, pursuant to section 303(a)(1)(B) of the Act, to make provisions to encourage the exploration, development, and mining of critical and strategic materials and other materials. more (OVER) 6

Sec. 307. Government-owned Equipment. An agency head is authorized, pursuant to section 303(e) of the Act, to install additional equipment, facilities, processes, or improvements to facilities owned by the government and to install government-owned equipment in industrial facilities owned by private persons.

Sec. 308. Identification of Shortfalls. Except during periods of national emergency or after a Presidential determination in accordance with sections 301(e)(1)(D)(ii), 302(c)(4)(B), or 303(a)(7)(B) of the Act, no guarantee, loan or other action pursuant to sections 301, 302, and 303 of the Act to correct an industrial shortfall shall be taken unless the shortfall has been identified in the Budget of the United States or amendments thereto.

Sec. 309. Defense Production Act Fund Manager. The Secretary of Defense is designated the Defense Production Act Fund Manager, in accordance with section 304(f) of the Act, and shall carry out the duties specified in that section, in consultation with the agency heads having approved Title III projects and appropriated Title III funds.

Sec. 310. Critical Items List. (a) Pursuant to section 107(b)(1)(A) of the Act, the Secretary of Defense shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment. (b) Each agency

head shall take appropriate action to ensure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. "Appropriate action" may include restricting contract solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory authority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

Sec. 311. Strengthening Domestic Capability. An agency head, in accordance with section 107(a) of the Act, may utilize the authority of Title III of the Act or any other provision of law, in consultation with the Secretary of Defense, to provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.

Sec. 312. Modernization of Equipment. An agency head, in accordance with section 108(b) of the Act, may utilize the authority of Title III of the Act to guarantee the purchase or lease of advance manufacturing equipment and any related services with respect to any such equipment for purposes of the Act.

PART IV - IMPACT OF OFFSETS

Sec. 401. Offsets. (a) The responsibilities and authority conferred upon the President by section 309 of the Act with respect to offsets are delegated to the Secretary of Commerce, who shall function as the President's Executive Agent for carrying out this authority. (b) The Secretary of Commerce shall prepare the annual report required by section 309(a) of the Act in consultation with the Secretaries of Defense, Treasury, Labor, State, the United States Trade Representative, the Arms Control and Disarmament Agency, the Director of Central Intelligence, and the heads of other departments and agencies as required. The heads of Federal departments and agencies shall provide the Secretary of Commerce with such information as may be necessary for the effective performance of this function. (c) The offset report shall be subject to the normal interagency clearance process conducted by the Director, OMB, prior to the report's submission by the President to Congress.

PART V - VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

Sec. 501. Appointments. The authority of the President under sections 708(c) and (d) of the Act is delegated to the heads of each Federal department or agency, except that, insofar as that authority relates to section 101 of the Act, it is delegated only to the heads of each Federal department or agency assigned functions under section 201(a) of this order. The authority delegated under this section shall be exercised pursuant to the provisions of section 708 of the Act, and copies and the status of the use of such delegations shall be furnished to the Director, FEMA.

Sec. 502. Advisory Committees. The authority of the President under section 708(d) of the Act and delegated in section 501 of this order (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with, guidelines and procedures established by the Administrator of General Services.

PART VI - EMPLOYMENT OF PERSONNEL

Sec. 601. National Defense Executive Reserve. (a) In accordance with section 710(e) of the Act, there is established in the Executive Branch a National Defense Executive Reserve ("NDER") composed of persons of recognized expertise from various segments of the private sector and from government (except full-time federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment. (b) The head of any department or agency may establish a unit of the NDER in the department or agency and train members of that unit. (c) The head of each department or agency with an NDER unit is authorized to exercise the President's authority to employ civilian personnel in accordance with section 703(a) of the Act when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of subsections 601(d) and (e) of this order and shall not be redelegated. (d) The head of a department or agency may activate an NDER unit, in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency. (e) At least 72 hours prior to activating the NDER unit, the head of the department or agency shall notify, in writing, the Assistant to the President for National Security Affairs of the impending activation and provide a copy of the determination required under subsection 601(d) of this order. (f) The Director, FEMA, shall coordinate the NDER program activities of departments and agencies in establishing units of the Reserve; provide for appropriate guidance for recruitment, training, and activation; and issue necessary rules and guidance in connection with the program. (g) This order suspends any delegated authority, regulation, or other requirement or condition with respect to the activation of any NDER unit, in whole or in part, or appointment of any NDER member that is inconsistent with the authorities delegated herein, provided that the aforesaid suspension applies only as long as sections 703(a) and 710(e) of the Act are in effect.

Sec. 602. Consultants. The head of each department or agency assigned functions under this order is delegated authority under sections 710(b) and (c) of the Act to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations. The authority delegated by this section shall not be redelegated.

PART VII - LABOR SUPPLY

Sec. 701. Secretary of Labor. The Secretary of Labor, identified in this section as the Secretary, shall: (a) Collect, analyze, and maintain data needed to make a continuing appraisal of the nation's labor requirements and the supply of workers for purposes of national defense. All agencies of the government shall cooperate with the Secretary in furnishing information necessary for this purpose, to the extent permitted by law; (b) In response to requests from the head of a Federal department or agency engaged in the procurement for national defense, consult with and advise that department or agency with respect to (1) the effect of contemplated actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, and (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor; (c) Formulate plans, programs, and policies for meeting defense and essential civilian labor requirements; (d) Project skill shortages to facilitate meeting defense and essential civilian needs and establish training programs; (e) Determine the occupations and skills critical to meeting the labor requirements of defense and essential civilian activities and, with the assistance of the Secretary

of Defense, more 9 the Director of Selective Service, and such other persons as the Director, FEMA, may designate, develop policies regulating the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves; and (f) Administer an effective labor-management relations policy to support the activities and programs under this order with the cooperation of other Federal agencies, including the National Labor Relations Board and the Federal Mediation and Conciliation Service.

PART VIII - DEFENSE INDUSTRIAL BASE INFORMATION AND REPORTS

Sec. 801. Foreign Acquisition of Companies. The Secretary of the Treasury, in cooperation with the Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Department of Agriculture, the Attorney General, and the Director of Central Intelligence, shall complete and furnish a report to the President and then to Congress in accordance with the requirements of section 721(k) of the Act concerning foreign efforts to acquire United States companies involved in research, development, or production of critical technologies and industrial espionage activities directed by foreign governments against private U.S. companies.

Sec. 802. Defense Industrial Base Information System. (a) The Secretary of Defense and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense, shall establish an information system on the domestic defense industrial base in accordance with the requirements of section 722 of the Act. (b) In establishing the information system required by subsection (a) of this order, the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, shall consult with each other for the purposes of performing the duties listed in section 722(d)(1) of the Act. (c) The Secretary of Defense shall convene a task force consisting of the Secretary of Commerce and the Secretary of each military department and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, to carry out the duties under section 722(d)(2) of the Act. (d) The Secretary of Defense shall report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items. The plans shall include an assessment of the performance and cost-effectiveness of procedures specified in section 722(b) of the Act. (e) The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director, FEMA, to improve the usefulness of information derived from the Census of Manufacturers in carrying out section 722 of the Act. more (OVER) 10 (f) The Secretary of Defense shall perform an analysis of the production base for not more than two major weapons systems of each military department in establishing the information system under section 722 of the Act. Each analysis shall identify the critical components of each system. (g) The Secretary of Defense, in consultation with the Secretary of Commerce, and the heads of other Federal departments and agencies as appropriate, shall issue a biennial report on critical components and technology in accordance with section 722(e) of the Act.

PART IX - GENERAL PROVISIONS

Sec. 901. Definitions. In addition to the definitions in section 702 of the Act, the following definitions apply throughout this order: (a) "Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within

the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, "civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, "civil transportation" shall include direction, control, and coordination of civil transportation capacity regardless of ownership. (b) "Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), and atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy. (c) "Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources. (d) "Fertilizer" means any product or combination of products that contain one or more of the elements -- nitrogen, phosphorus, and potassium - - for use as a plant nutrient. (e) "Food resources" means all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means all starches, sugars, vegetable and animal or marine fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product. (f) "Food resource facilities" means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including more 11 cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof). (g) "Functions" include powers, duties, authority, responsibilities, and discretion. (h) "Head of each Federal department or agency engaged in procurement for the national defense" means the heads of the Departments of Defense, Energy, and Commerce, as well as those departments and agencies listed in Executive Order No. 10789. (i) "Heads of other appropriate Federal departments and agencies" as used in part VIII of this order means the heads of such other Federal agencies and departments that acquire information or need information with respect to making any determination to exercise any authority under the Act. (j) "Health resources" means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population. (k) "Metals and minerals" means all raw materials of mineral origin (excluding energy) including their refining, smelting, or processing, but excluding their fabrication. (l) "Strategic and Critical Materials" means materials (including energy) that (1) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national security emergency, and (2) are not found or produced in the United States in sufficient quantities to meet such need and are vulnerable to the termination or reduction of the availability of the material. (m) "Water resources" means all usable water, from all sources, within the jurisdiction of the United States, which can be managed, controlled, and allocated to meet emergency requirements.

Sec. 902. General. (a) Except as otherwise provided in subsection 902(c) of this order, the authorities vested in the President by title VII of the Act may be exercised and performed by the head of each department and agency in carrying out the delegated authorities under the Act and this order. (b) The authorities which may be exercised and performed pursuant to subsection

902(a) of this order shall include (1) the power to redelegate authorities, and to authorize the successive redelegation of authorities, to departments and agencies, officers, and employees of the government, and (2) the power of subpoena with respect to authorities delegated in parts II, III, and IV of this order, provided that the subpoena power shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer identified in subsection 902(a) of this order or by such other person or persons as the officer shall designate. more (OVER) 12 (c) Excluded from the authorities delegated by subsection 902(a) of this order are authorities delegated by parts V, VI, and VIII of this order and the authority with respect to fixing compensation under section 703(a) of the Act.

Sec. 903. Authority. All previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except as they are inconsistent with this order or are subsequently amended or revoked under proper authority. Nothing in this order shall affect the validity or force of anything done under previous delegations or other assignment of authority under the Act.

Sec. 904. Effect on other Orders. (a) The following are superseded or revoked: (1) Section 3, Executive Order No. 8248 of September 8, 1939, (4 FR 3864). (2) Executive Order No. 10222 of March 8, 1951 (16 FR 2247). (3) Executive Order No. 10480 of August 14, 1953 (18 FR 4939). (4) Executive Order No. 10647 of November 28, 1955 (20 FR 8769). (5) Executive Order No. 11179 of September 22, 1964 (29 FR 13239). (6) Executive Order No. 11355 of May 26, 1967 (32 FR 7803). (7) Sections 7 and 8, Executive Order No. 11912 of April 13, 1976 (41 FR 15825, 15826-27). (8) Section 3, Executive Order No. 12148 of July 20, 1979 (44 FR 43239, 43241). (9) Executive Order No. 12521 of June 24, 1985 (50 FR 26335). (10) Executive Order No. 12649 of August 11, 1988 (53 FR 30639). (11) Executive Order No. 12773 of September 26, 1991 (56 FR 49387), except that part of the order that amends section 604 of Executive Order 10480. (b) Executive Order No. 10789 of November 14, 1958, is amended by deleting "and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950," as it appears in the first sentence. (c) Executive Order No. 11790, as amended, relating to the Federal Energy Administration Act of 1974, is amended by deleting "Executive Order No. 10480" where it appears in section 4 and substituting this order's number. more 13 (d) Subject to subsection 904(c) of this order, to the extent that any provision of any prior Executive order is inconsistent with the provisions of this order, this order shall control and such prior provision is amended accordingly.

Sec. 905. Judicial Review. This order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Appendix E:

Prime Contractor Survey

OFFSETS IN DEFENSE TRADE:
SUPPLEMENTAL DATA COLLECTION

SCOPE OF ASSESSMENT

Under Section 309 of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. App. Sec. 2155), the U.S. Department of Commerce, Bureau of Industry and Security (BIS), Office of Strategic Industries and Economic Security is required to gather information on offsets in defense trade. Section 309 was recently amended to require BIS to collect additional information regarding offsets. In part, the language requires BIS to:

“Describe the impact of international or foreign sales of United States defense products and related offsets, industrial participation agreements, and similar arrangements on domestic prime contractors and, to the extent practicable, the first 3 tiers of domestic contractors and subcontractors during the preceding 5-year period in terms of domestic employment, including any job losses, on an annual basis.” (P.L.108-195, Sec.7(a)(1)(C))

Your timely and complete response to this survey will assist us in completing our analysis within the time allowed by the Congress.

RESPONSE TO THIS SURVEY IS REQUIRED BY LAW

This report is required by law (50 U.S.C. App. Sec. 2155). Failure to report can result in a maximum fine of \$10,000 or imprisonment up to one year, or both. Information furnished herewith is deemed confidential and will not be published or disclosed except in accordance with Section 705 of the Defense Production Act of 1950, as amended (50 U.S.C. App. Sec. 2155). Section 2155 et. seq. prohibits the publication or disclosure of this information unless the Secretary of Commerce determines that its withholding is contrary to the national defense. Consistent with Section 2155, the information submitted will not be published or disclosed, other than in aggregate form, and such information will be protected pursuant to the appropriate exemptions from disclosure under the Freedom of Information Act (FOIA), should it be the subject of a FOIA request.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

BURDEN ESTIMATE & REQUEST FOR COMMENT

Public reporting burden for this collection of information is estimated to average twenty hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Commerce, BIS Reports Clearance Officer, Room 6883, Bureau of Industry and Security, Washington, DC 20230, and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control Number 0694-0119), Washington, DC 20503.

Company Name

Employment Information

Please complete the table below regarding your company's employment for 1998-2002. For each year, please segment your total work force by 1) U.S.-based and foreign-based; 2) defense and non-defense; and 3) production and all other. This information requested is consistent with data your firm already provides to the Federal Government.¹

Firm Employment					
	1998	1999	2000	2001	2002
TOTAL EMPLOYEES					
U.S.-Based					
Foreign-Based					
Defense					
Non-Defense					
Production					
All Other					

¹ This employment data is already reported to U.S. Census Bureau per Annual Survey of Manufactures, approved by OMB No. 0607-0899. The collection of such data is authorized under P.L. 108-195, Sec.7(a)(3)(A).

Reporting to Foreign Governments

Please submit copies of all reporting documentation (photocopies or electronic versions) already provided to all foreign governments (or designee) in fulfilling offset arrangements, industrial participation agreements, or similar arrangements² for only the two weapon systems listed on the attachment. This documentation will apply only to your reporting activities during 2002 and for which you received credit from the foreign entity.

Supplier/Subcontractor Information

Please provide an electronic list of your top 1,000 (by value) suppliers/subcontractors (both foreign and domestic) during 1998-2002 contributing to the two (2) weapon systems listed on the attached sheet. This list should include the name of the company, the defense system supported, the supplier's country, and the item or service supplied.

BIS will then choose at random 100 of these companies. You will be contacted within five days of your submission to provide an electronic version of the contact information for only these 100. At that time, we request that you provide the company and contact name, address, contact number, and email. BIS will send surveys to the 100 companies on the list, gathering information that will allow BIS to complete the requirement in the DPA calling for assessing the impact of defense offsets on employment in the first three tiers of domestic contractors and subcontractors.

Please provide this information in an electronic format: Access, SQL OLAP, or Excel are the preferred formats; dBase, Oracle, ASCII, or comma delimited would also be acceptable.

Attachment for Company XYZ

Weapon System 1:

Countries:

Weapon System 2:

Countries:

For questions, please contact Brad Botwin, Director, Strategic Analysis Division, at bbotwin@bis.doc.gov or 703-235-0050 or Katie Starrett, Trade and Industry Analyst, at kstarret@bis.doc.gov or 703-235-0054. Thank you for your cooperation. XX

² Requiring this documentation is authorized under P.L. 108-195, Sec.7(a)(3)(B).

Appendix F:
Subcontractor Survey

OFFSETS IN DEFENSE TRADE: SUPPLEMENTAL DATA COLLECTION

SCOPE OF ASSESSMENT

Under Section 309 of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. App. Sec. 2155), the U.S. Department of Commerce, Bureau of Industry and Security (BIS), Office of Strategic Industries and Economic Security is required to gather information on offsets in defense trade. Section 309 was recently amended to require BIS to collect additional information regarding offsets. In part, the language requires BIS to:

“Describe the impact of international or foreign sales of United States defense products and related offsets, industrial participation agreements, and similar arrangements on domestic prime contractors and, to the extent practicable, the first 3 tiers of domestic contractors and subcontractors during the preceding 5-year period in terms of domestic employment, including any job losses, on an annual basis.” (P.L.108-195, Sec.7(a)(1)(C))

Your timely and complete response to this survey will assist us in completing our analysis within the time allowed by the Congress.

RESPONSE TO THIS SURVEY IS REQUIRED BY LAW

This report is required by law (50 U.S.C. App. Sec. 2155). Failure to report can result in a maximum fine of \$10,000 or imprisonment up to one year, or both. Information furnished herewith is deemed confidential and will not be published or disclosed except in accordance with Section 705 of the Defense Production Act of 1950, as amended (50 U.S.C. App. Sec. 2155). Section 2155 et. seq. prohibits the publication or disclosure of this information unless the Secretary of Commerce determines that its withholding is contrary to the national defense. Consistent with Section 2155, the information submitted will not be published or disclosed, other than in aggregate form, and such information will be protected pursuant to the appropriate exemptions from disclosure under the Freedom of Information Act (FOIA), should it be the subject of a FOIA request.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

BURDEN ESTIMATE & REQUEST FOR COMMENT

Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Commerce, BIS Reports Clearance Officer, Room 6883, Bureau of Industry and Security, Washington, DC 20230, and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control Number 0694-0119), Washington, DC 20503.

D. Overall, please rate your experience(s) being involved with offset activities:

Positively impacted (additional business, access to new markets and technologies, synergies with overseas suppliers and competitors, etc.)

Please explain: _____

Negatively impacted (transferred proprietary technology and know-how, created a new competitor, lost future business, etc.)

Please explain _____

2. Non-Involvement in Offset Activities

If you have no record of involvement in offset activities with U.S. defense prime contractors, please answer the following questions.

A. Using the same definition for offsets in defense trade, to your knowledge, has your firm ever benefited as the result of an offset agreement entered into by a prime contractor that you supply? Benefits can include additional sales because of added exports, maintenance or repair contracts in new foreign markets, etc.

Yes No Please discuss

B. To the best of your knowledge, has your firm ever been negatively affected as the result of an offset agreement entered into by a prime contractor? Potential negative impacts include: no longer party to weapon system supply chain, added foreign competition because of offsets, etc.

Yes No Please discuss

Employment Information

Please complete the table below regarding your company's employment for 1998-2002. For each year, please segment your total work force by 1) U.S.-based and foreign-based; 2) defense and non-defense; and 3) production and all other. This information requested is consistent with data your firm already provides to the Federal Government.³

Firm Employment					
	1998	1999	2000	2001	2002
TOTAL EMPLOYEES					
U.S.-Based					
Foreign-Based					
Defense					
Non-Defense					

³ This employment data is already reported to U.S. Census Bureau per Annual Survey of Manufactures, approved by OMB No. 0607-0899. The collection of such data is authorized under P.L. 108-195, Sec.7(a)(3)(A).

Production					
All Other					

4. Effects of Defense Offsets on Employment Levels

Offsets can be one of many factors which can impact increases or decreases in a firm's employment.

A. To what extent do you attribute decreases in your firm's U.S. employment between 1998 and 2002 to one or more of the following factors? Please rate each of the factors on a scale of 1 to 5, with 1 having the least impact on decreases in employment and 5 having the most impact. If any factor is not applicable, please mark it NA.

- Cost of Doing Business (external costs such as corporate tax rates, employee benefits, tort litigation, regulatory compliance, and energy)
- Difficulties in hiring and/or retaining skilled employees
- Began outsourcing overseas
- Began outsourcing domestically
- Transferred production overseas
- Loss of market due to violation of intellectual property rights (patents, licenses, etc.)
- Fair Trade Issues (including currency valuation, exchange rates, dumping, foreign labor practices—wages, regulations, etc., government subsidies)
- Offsets in Defense Trade (industrial and commercial compensation practices)
- Other: _____

B. To what extent do you attribute increases in your firm's U.S. employment between 1998 and 2002 to one or more of the following factors? Please rate each of the factors on a scale of 1 to 5, 1 having the least impact on increases in employment and 5 having the most impact: If any factor is not applicable, please mark it NA.

- Increased defense related contracts
- Increased non-defense related contracts
- Bringing an activity in-house that was previously outsourced
- Adding Research and Development programs
- Merger and/or Acquisition
- Tax incentives
- Adding non-production employees (sales and marketing staff, maintenance, security, administrative, etc.)
- Anticipation of future retirements
- Offsets in Defense Trade (industrial and commercial compensation practices)
- Other: _____

5. Supplier/Subcontractor Information

In the available spaces below, please provide contact information for your top ten suppliers/subcontractors by value contributing to the defense contracts carried out for Company ABC during 1998-2002. This information will allow BIS to complete the requirement in the DPA calling for assessing the impact of defense offsets on employment in the first three tiers of domestic contractors and subcontractors. Please provide company and contact name, address,

contact number, email, defense system supported, a description of the item or service supplied, and the appropriate four-digit Standard Industrial Classification (SIC) code

For questions, please contact Katie Starrett, Trade and Industry Analyst, at kstarret@bis.doc.gov or 703-235-0054 or Brad Botwin, Director, Strategic Analysis Division, at bbotwin@bis.doc.gov or 703-235-0050. Thank you again for your cooperation.

Appendix G:

Glossary and Offset Example

GLOSSARY AND OFFSET EXAMPLE

Offsets: Industrial compensation practices required as a condition of purchase in sales of defense articles and/or defense services.

Offset Agreement: Contract specifying the percentage of the total sale to be offset, the forms of industrial compensation required, the duration of the agreement, and penalty clauses, if any.

Offset Transaction: Any activity for which the defense prime contractor claims credit in fulfillment of the offset agreement. For the purpose of analysis, BIS divides offset transactions into nine different categories. These are also the required categories for the offset reporting requirement.

Technology Transfer: Transfer of technology that occurs as a result of an offset agreement and that may take the form of research and development conducted abroad, technical assistance provided to the subsidiary or joint venture of overseas investment, or other activities under direct commercial arrangement between the defense prime contractor and a foreign entity.

Subcontractor Production: Overseas production of a part or component of a U.S.-origin defense article. The subcontract does not necessarily involve license of technical information and is usually a direct commercial arrangement between the defense prime contractor and a foreign producer.

Co-production: Overseas production based upon government-to-government agreement that permits a foreign government or producer(s) to acquire the technical information to manufacture all or part of a U.S. origin defense article. Co-production includes government-to-government licensed production, but excludes licensed production based upon direct commercial arrangements by U.S. manufacturers.

Licensed Production: Overseas production of a U.S.-origin defense article based upon transfer of technical information under direct commercial arrangements between a U.S. manufacturer and a foreign government or producer.

Purchases: Procurement of off-the-shelf items from the offset recipient. Often, but not always, purchases are indirect by nature. Indirect purchases are similar in definition to countertrade, while direct purchases are analogous to buy-backs.

Training: Generally includes training related to the production or maintenance of the exported defense item. Training may be required in unrelated areas, such as computer training, foreign language skills, or engineering capabilities.

Investment: Investment arising from the offset agreement, taking the form of capital invested to establish or expand a subsidiary or joint venture in the foreign country.

Marketing: Marketing assistance to foreign companies in either defense or unrelated industries. In some cases, countries require marketing in addition to the offsets. Also encompasses export assistance.

Other: Any other form of offset required or offered by a defense company/foreign government.

Offset Recipients: Foreign firms that receive the benefits of offset transactions from defense firms. For example, a U.S. company sells a defense item to a foreign country, with an offset obligation requiring that components worth 50 percent of the export contract be built in the foreign country. The foreign companies manufacturing these components would be the “offset recipients.”

Offset Fulfiller: The company that provides the offset compensation, which is usually the defense firm who signed the offset agreement. However, there are times when the obligation is not related to the defense firm’s specialty and therefore is contracted out. For example, if marketing is a component of the offset requirement, the defense firm may hire a marketing company to satisfy the obligation. The marketing firm would then be the “offset fulfiller.”

Actual Value of Offset Transactions: The market value of the offset transaction measured in U.S. dollars.

Credit Value of Offset Transactions: The value credited for the offset transaction by application of a multiplier or other method. The credit value may be greater than or equal to the actual value of the offset.

Multiplier: A factor applied to the actual value of certain offset transactions to calculate the credit value earned. Foreign governments use multipliers to provide firms with incentives to offer offsets in targeted areas of economic growth. When a multiplier is applied to the off-the-shelf price of a more desirable service or product offered as an offset, the defense firm receives a higher credit value toward fulfilling an offset obligation.

Example: A foreign government interested in a specific technology may offer a multiplier of “six” for offset transactions providing access to that technology. A U.S. defense company with a 120 percent offset obligation from a \$1 million sale of defense systems ordinarily would be required to provide technology transfer through an offset equaling \$1.2 million. With a multiplier of six, however, the U.S. company could offer only \$200,000 (actual value) in technology transfer and earn \$1.2 million in credit value, fulfilling its entire offset obligation under the agreement.

Direct Offsets: Offset transactions that are directly related to the defense items or services exported by the defense firm. These are usually in the form of co-production, subcontracting, training, production, licensed production, or possibly technology transfer or financing activities.

Indirect Offsets: Offset transactions that are not directly related to the defense items or services exported by the defense firm. The kinds of offsets that are considered “indirect” include purchases, investment, training, financing activities, marketing/exporting assistance, and technology transfer.

Penalties: Measures used to motivate defense firms to fulfill their offset obligation within the timeframe allotted by the contract.

Liquidated damages: If a firm fails to fulfill all required offsets by the stipulated deadline, it must pay a percentage (usually 5-20 percent) of the total value of the export contract. The percentage for liquidated damages is specified in the contract.

Non-performance penalties: Firms must pay a prearranged percent (2-10 percent) of all obligations not fulfilled within the allotted time.

Best efforts clauses: With a “best efforts” clause, there is no penalty for non-fulfillment of the contract; the firm is judged to be acting in good faith to meet its obligations. However, firms’ reputations can be jeopardized if offset obligations are not fulfilled as stated in the contract; non-fulfillment would likely result in the U.S. defense firm being excluded from future procurements by that purchasing government.

OFFSET EXAMPLE

This example is for illustrative purposes only and in no way represents an actual offset agreement. The fictitious nation of Atlantis purchased ten KS-340 jet fighters from a U.S. defense firm, PJD Inc. (PJD), for a total of \$500 million with 100 percent offset. In other words, the offset agreement obligated PJD to fulfill offsets equal to the value of the contract, or \$500 million. The government of Atlantis decided what would be required of PJD in order to fulfill its offset obligation, which would include both direct and indirect compensation. The government also assigned the credit value for each category.

Direct Offsets (i.e., related to the production of the export item, the KS-340 jet fighter)

Technology Transfer: The technology transfer requirement was assigned 36 percent of the total offset obligation. PJD agreed to transfer all the necessary technology and know-how to Atlantis firms in order to repair and maintain the jet fighters. The Atlantis government deemed this capability to be vital to national security and, therefore, gave a multiplier of six. As a result, the transfer of technology actually worth \$30 million was given a credit value of \$180 million.

Co-production: Atlantis firms manufactured some components of the KS-340 jet fighters, totaling \$220 million, which accounted for 44 percent of the offset obligation.

Indirect Offsets (i.e., not related to the production of the export item, the KS-340 jet fighter)

Purchase: PJD purchased marble statues from Atlantis manufacturers for eventual resale. These purchases accounted for 7 percent of the offset obligation, or \$35 million.

Financing Activities: PJD made investments in non-defense related industries in Atlantis; this accounted for 4 percent of the offset obligation, or \$20 million.

Technology Transfer: PJD provided submarine technology to Atlantis firms, which accounted for 6 percent of the offset obligation, or \$30 million.

Marketing: Commercial assistance was provided for Atlantis fisheries to market their fish in the United States, which fulfilled the remaining 3 percent, or \$15 million of the offset obligation. In this example, the Atlantis fisheries are *offset recipients* because they received marketing services

for their product. PJD hired an American advertising firm, the *offset fulfiller*, to market the Atlantis fish.

The duration of the offset agreement was 10 years with a three-year grace period. A timetable was created by the Atlantis government outlining which obligations should be fulfilled, to what extent, and when. If PJD did not meet the deadlines given, the company was required to pay the Atlantis government 5 percent of the unfulfilled offset amount in liquidated damages. For example, if after 10 years, only 98.5 percent of the offset obligation of \$500 million was fulfilled, PJD would be required to pay liquidated damages in the amount of 5 percent of the 1.5 percent unfulfilled portion of the offset obligation, or \$375,000.

Appendix H:

List of U.S. Government Offset Reports

Partial Listing of Previous U.S. Government Reports on Offsets

October 1985	Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries - U.S. International Trade Commission.
December 1985	<i>The Impact of Offsets in Defense-Related Exports</i> - Office of Management and Budget.
December 1986	Second Annual Report on the Impact of Offsets in Defense-Related Exports - Office of Management and Budget.
December 1987	Impact of Offsets in Defense-Related Exports: A Summary of the First Three Annual Reports - Office of Management and Budget.
December 1988	<i>Offsets in Military Exports</i> - Office of Management and Budget.
April 1990	<i>Report on Offsets in Military Exports</i> - Office of Management and Budget.
April 1996	Military Exports: Offset Demands Continue to Grow - U.S. General Accounting Office.
May 1996	1 st Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended - U.S. Department of Commerce.
June 1997	<i>Policy Issues in Aerospace Offsets: Report of A Workshop</i> - Board on Science, Technology, and Economic Policy, National Research Council.
August 1997	2 nd Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended - U.S. Department of Commerce.
January 1998	<i>Symposium Papers on: Trends and Challenges in Aerospace Offsets</i> – Board on Science, Technology, and Economic Policy, National Research Council.
August 1998	3 rd Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended - U.S. Department of Commerce.
December 1998	Defense Trade: U.S. Contractors Employ Diverse Activities to Meet Offset Obligations – U.S. General Accounting Office.
March 1999	<i>Trends and Challenges in Aerospace Offsets</i> - Board on Science, Technology, and Economic Policy, National Research Council.

October 1999	4 th Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended - U.S. Department of Commerce.
January 2001	Status Report of the Presidential Commission on Offsets in International Trade
May 2001	5 th Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended - U.S. Department of Commerce.
February 2003	6 th Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended - U.S. Department of Commerce.
July 2003	7 th Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended – U.S. Department of Commerce.
June 2004	8 th Offsets in Defense Trade: A Study Conducted Under Section 309 of the Defense Production Act of 1950, as Amended – U.S. Department of Commerce.

Appendix I:
SIES Publication List



Office of Strategic Industries and Economic Security
Strategic Analysis Division
PUBLICATIONS LIST



The U.S. Department of Commerce's Strategic Analysis Division is the focal point within the Department for conducting assessments of defense-related industries and technologies. The studies are based on detailed industry-specific surveys used to collect information from U.S. companies and are conducted on behalf of the U.S. Congress, the military services, industry associations, or other interested parties.

PUBLICATION TITLE	<i>*Italics indicate forthcoming studies</i>
<i>9th Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 – December 2004</i>	
<i>Defense Industrial Base Assessment: U.S. Imaging and Sensors Industry – December 2004</i>	
<i>National Security Assessment of the Munitions Power Sources Industry – Summer 2004</i>	
<i>National Security Assessment of the U.S. Shipbuilders' Supplier Base – Summer 2004</i>	
Offsets in Defense Trade and The U.S. Subcontractor Base – August 2004	
8th Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 – June 2004	
National Security Assessment of the Air Delivery (Parachute) Industry – May 2004	
Industry Attitudes on Collaborating with DoD in R&D – Air Force – January 2004	
Army Theater Support Vessel Procurement: Industrial Base/Economic Impact Assessment – December 2003	
A Survey of the Use of Biotechnology in U.S. Industry – October 2003	
U.S. Textile and Apparel Industries: An Industrial Base Assessment – October 2003	
7th Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 - July 2003	
Technology Assessment: U.S. Assistive Technology Industry – February 2003	
6th Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 - February 2003	
Heavy Manufacturing Industries: Economic Impact and Productivity of Welding – Navy – June 2002	
The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security – October 2001	
National Security Assessment of the U.S. High-Performance Explosives & Components Sector – June 2001	
National Security Assessment of the U.S. Shipbuilding and Repair Industry - May 2001	
Statistical Handbook of the Ball and Roller Bearing Industry (Update) - June 2001	
5 th Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 - May 2001	
National Security Assessment of the Cartridge and Propellant Actuated Device Industry: Update - December 2000	
The Effect on the National Security of Imports of Crude Oil and Refined Petroleum Products - November 1999	
4 th Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 - October 1999	
U.S. Commercial Technology Transfers to The People's Republic of China – January 1999	

Critical Technology Assessment: Optoelectronics - October 1998
3 rd Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 - August 1998
National Security Assessment of the Emergency Aircraft Ejection Seat Sector - November 1997
2 nd Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 – August 1997
Critical Technology Assessment of the U.S. Semiconductor Materials Industry - April 1997
1 st Offsets in Defense Trade - Conducted under §309 of the Defense Production Act of 1950 - May 1996
National Security Assessment of the Cartridge and Propellant Actuated Device Industry - October 1995
A Study of the International Market for Computer Software with Encryption – NSA -1995
The Effect of Imports of Crude Oil and Petroleum Products on the National Security - December 1994
Critical Technology Assessment of U.S. Artificial Intelligence - August 1994
Critical Technology Assessment of U.S. Superconductivity - April 1994
Critical Technology Assessment of U.S. Optoelectronics - February 1994
Critical Technology Assessment of U.S. Advanced Ceramics - December 1993
Critical Technology Assessment of U.S. Advanced Composites - December 1993
The Effect of Imports of Ceramic Semiconductor Packages on the National Security - August 1993
National Security Assessment of the U.S. Beryllium Industry - July 1993
National Security Assessment of the Antifriction Bearings Industry - February 1993
National Security Assessment of the U.S. Forging Industry - December 1992
The Effect of Imports of Gears and Gearing Products on the National Security - July 1992
Natl. Sec. Assessment of the Dom. and For. Subcontractor Base~3 US Navy Systems - March 1992
Natl. Security Assessment of the U.S. Semiconductor Wafer Processing Equipment Industry - April 1991
National Security Assessment of the U.S. Robotics Industry - March 1991
National Security Assessment of the U.S. Gear Industry - January 1991

Archived Studies	
The Effect of Imports of Uranium on the National Security – Sept. 1989	Investment Castings: A Natl. Security Assessment – Dec. 1987
The Effect of Imports of Crude Oil and Refined Petroleum on Natl. Security –Jan. 1989	Joint Logistics Commanders/DOC Precision Optics Study - June 1987
The Effect of Imports of Plastic Injection Molding Machines on Natl. Security – Jan. 1989	An Economic Assessment of the U.S. Industrial Fastener Industry – Mar. 1987
The Effect of Imports of Anti-Friction Bearings on the Natl. Security - July 1988	Joint Logistics Commanders/DOC Bearing Study - June 1986

For further information about the Division’s programs or for additional copies of reports, please visit us at:

<http://www.bis.doc.gov/> and select “Defense Industrial Base Programs,” or contact Brad Botwin, Director, Strategic Analysis Division
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