

111TH CONGRESS
2D SESSION

S. _____

To require the Secretary of Defense to take illegal subsidization into account in evaluating proposals for contracts for major defense acquisition programs.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To require the Secretary of Defense to take illegal subsidization into account in evaluating proposals for contracts for major defense acquisition programs.

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. ACCOUNTING FOR ILLEGAL SUBSIDIZATION IN**
4 **EVALUATION OF PROPOSALS FOR CON-**
5 **TRACTS FOR MAJOR DEFENSE ACQUISITION**
6 **PROGRAMS.**

7 (a) REQUIREMENT.—

8 (1) IN GENERAL.—In awarding a contract for
9 any major defense acquisition program, the Sec-
10 retary of Defense shall, in conducting the cost or

1 price evaluation of any proposal for that contract,
2 take into account any final determination described
3 in paragraph (2) and take the action described in
4 paragraph (3).

5 (2) FINAL DETERMINATION DESCRIBED.—A
6 final determination described in this paragraph is a
7 ruling of a dispute settlement panel of the World
8 Trade Organization, issued pursuant to the Under-
9 standing on Rules and Procedures Governing the
10 Settlement of Disputes, that either a prohibited or
11 actionable subsidy has been provided with respect to
12 any merchandise or the development of any mer-
13 chandise that is part of a proposal described in
14 paragraph (1).

15 (3) ACTION DESCRIBED.—The action described
16 in this paragraph is, in conducting the cost or price
17 evaluation of a proposal, to increase the cost or price
18 of the proposal by the amount of the subsidy found
19 to be prohibited or actionable in the final determina-
20 tion described in paragraph (2), as calculated jointly
21 by the Secretary of Commerce and the United States
22 Trade Representative after notification is made by
23 the Secretary of Defense for the need for such a cal-
24 culation.

25 (b) DEFINITIONS.—In this section:

1 (1) PROHIBITED OR ACTIONABLE SUBSIDY.—

2 The term “prohibited or actionable subsidy” means
3 a subsidy that is inconsistent with the Agreement on
4 Subsidies and Countervailing Measures described in
5 section 101(d)(12) of the Uruguay Round Agree-
6 ments Act (19 U.S.C. 3511(d)(12)) because the sub-
7 sidy is a prohibited or actionable subsidy under the
8 Agreement.

9 (2) COST OR PRICE EVALUATION.—The term
10 “cost or price evaluation” means an evaluation con-
11 ducted by a source selection authority pursuant to
12 subpart 15.305(a)(1) of the Federal Acquisition
13 Regulation.

14 (3) MAJOR DEFENSE ACQUISITION PROGRAM.—

15 The term “major defense acquisition program” has
16 the meaning given that term in section 2430 of title
17 10, United States Code.