



Industrial Policy Provisions

July 9, 2008

The preservation and enhancement of the U.S. military industrial base has been a subject of intense discussion and legislation over the past several decades. Some proposals have focused on keeping a domestic source of certain technologies and capabilities. Other proposals have focused on ensuring that U.S. industry has a reliable and responsible domestic capability in critical defense areas. While HR 5658 contains a number of provisions that are designed to advance US military industrial competitiveness, it also establishes a new precedent of interposing consideration of commercial trade matters in the defense acquisition process. While AIA supports a strong US defense industrial base, the following concerns and recommendations are offered:

Section 804: Would prohibit the Secretary of Defense from entering into a contract with a foreign entity or partnership involving a foreign entity if the entity is the beneficiary of an illegal subsidy, or accused by the United States of being the beneficiary of an illegal subsidy from a country that is a member of the WTO. The prohibition would not apply to contracts that have reached milestone B approval or contracts for goods and services that are not benefiting from the subsidy; in certain cases in which there are ongoing consultations requested by the United States, and the President would have waiver authority if there is a significant threat to national defense. While AIA supports the US government in such trade cases, we are concerned with the interjection of a commercial trade matter into the defense acquisition process and oppose efforts that would apply a prohibition without due process and without giving the WTO the opportunity to consider and render judgment. Congress should work with the Administration to develop other, more appropriate means of supporting our industries in WTO subsidies cases.

Section 805: Would require the Secretary of Defense to issue regulations that would allow the source selection authority to consider impacts on the domestic defense industrial base as an evaluation factor, provide the source selection authority with flexibility in assigning the importance of that factor relative to others, and impose penalties if a contractor knowingly or willfully misrepresents the impacts of their proposal on the domestic industrial base during source selection. AIA strongly believes that a balance of cost, schedule, capability and other critical requirements should remain an essential and primary consideration when awarding contracts in order to achieve best-value to the government in support of our warfighters.

Section 807: Requires the Secretary of Defense to issue regulations providing for a comprehensive evaluation of proposals for a major defense acquisition program when a substantial portion of the work will be performed outside the United States. The valuation would determine the extent to which costs for the execution of a proposal (health care, retirement, workman's compensation) would be borne not by the contractor but by a foreign government if such costs are not also born by a US government entity. The contracting officer would then be required to consider these indirect subsidies in evaluating proposals. AIA strongly believes that this provision will disadvantage U.S. industry from establishing foreign subsidiaries to compete in a global market for the sale of goods and services that would result in reduced cost to the U.S. government. AIA also maintains that a balance of cost, schedule, capability and other critical requirements should remain an essential and primary consideration when awarding contracts in order to achieve best-value to the government in support of our warfighters.

STATEMENT OF ADMINISTRATION POLICY:

The Statement of Administration Policy (SAP) on HR 5658 opposes these sections because they may affect provisions covered by international agreements and could violate international trade rules. Other potential unintended consequences noted in the SAP include jeopardizing military readiness; reducing competition; undermining DOD's ability to acquire the best goods, services, and technologies for American warfighters at the best price for the taxpayers; adversely impacting U.S. companies teamed with foreign entities; and could provoke retaliation against US companies by foreign governments. The SAP states that the President's senior advisors would recommend a veto if these provisions are included in a bill presented to the President.

RECOMMENDATION:

The aerospace industry appreciates the efforts to ensure the competitiveness of the U.S. defense industrial base and the availability of critical domestic capabilities. However, we are concerned about the potential inclusion of these sections. These provisions could have a significant impact on the sale of US military products to our allies and civilian aircraft worldwide. It could also impact future joint military development programs in support of multi-national use of military hardware. In today's budget environment, sharing developmental costs with our allies for new military hardware is critical to maintaining our global military superiority. .

We encourage Congress to work with the Administration to develop other, more appropriate means of supporting our defense industrial base including the recommendations cited by the "Global Competitiveness Report 2007-2008" of the World Economic Forum. This report lists tax rates, tax regulations, and inefficient government bureaucracy as the most problematic factors to doing business in the United States. An inadequately educated workforce is also listed among the top 5 problematic factors for the U.S. AIA believes that the Congress could have a greater long term beneficial impact on US industrial competitiveness by taking on these issues--making permanent the R&D tax credit; eliminating section 511 of the 2006 reconciliation act (3% withhold); reducing corporate tax rates; eliminating the barriers to commercial products and services; streamlining the export control system; making greater use of multi-year procurement contracts to stabilize the industrial base; and strengthening efforts to promote science, technology, engineering, and mathematics in our school systems.