

Feingold Amendment to the Arms Export Control Act

The Feingold Amendment to the Arms Export Control Act (PL 103-26: Section 733. Apr 30, 1994. 22 USC 2779a, as amended in November 1999) states that neither U.S. suppliers of defense articles or services sold under the Act, nor employees, agents, or subcontractors of such suppliers may, with respect to the sale of any such defense article or service to a foreign country, make any incentive payments to any other U.S. person to induce or persuade that U.S. person to acquire goods or services produced, manufactured, grown or extracted, in whole or in part, in the foreign country for the purpose of satisfying, in whole or in part, any offset agreement with that country. Examples of incentive payments are monetary compensation such as cash payments, payment made by check, and the extension of credit or inducements to encourage the extension of credit from a bank at lower interest rates.

Any person who violates the Feingold Amendment will be subject to civil penalties for each violation. The penalty may not exceed \$500,000, or five times the amount of the prohibited incentive payment, whichever is greater.

The language of the Amendment is vague, and the State Department has never issued implementing language for the Amendment, so it is open to broad interpretation.

Section 2779a

(a) In general

No United States supplier of defense articles or services sold under this Act, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale of any such defense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

(b) Civil Penalties

Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

(c) Presidential authority

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 [50 App. U.S.C.A. § 2410(c), (d), (e), and (f) and section 12(a) of such Act [50 App. U.S.C.A. § 2411(a), subject to the same terms and conditions as are applicable to such powers under that Act [50 App. U.S.C.A. § 2401 et seq.], except that notwithstanding section 11(c) of that Act [50 App. U.S.C.A. § 2410(c)], the civil penalty for each violation of this section may not exceed \$500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

(d) Definitions

For purposes of this section –

(1) the term “offset agreement” means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier;

(2) the term “incentive payments” means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States persons to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term “United States person” means –

(A) an individual who is a national or permanent resident alien of the United States;
and

(B) any corporation, business association, partnership, trust, or other juridical entity –
(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or
(ii) owned or controlled in fact by individuals described in subparagraph (A).

(Pub.L. 90-629, c. 3, . § 39A, as added Pub.L. 103-236, Title VII, . § 733, Apr. 30, 1994, 108 Stat. 504)