

Mikulski Sanders Toomey
Murkowski Sullivan Vitter

The bill (S. 1890), as amended, was passed.

AMERICA'S SMALL BUSINESS TAX RELIEF ACT OF 2015—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MCCONNELL. Mr. President, what is the pending business?

The PRESIDING OFFICER. The motion to proceed on H.R. 636.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 55, H.R. 636, an act to amend the Internal Revenue Code of 1986 to permanently extend increased expensing limitations, and for other purposes.

Mitch McConnell, Orrin G. Hatch, Daniel Coats, Lamar Alexander, John Boozman, James M. Inhofe, Chuck Grassley, Mike Crapo, Richard Burr, Thad Cochran, Johnny Isakson, Roy Blunt, Dean Heller, John Thune, John McCain, John Cornyn, Steve Daines.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the mandatory quorum call be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

DEFEND TRADE SECRETS BILL

Mr. DURBIN. Mr. President, I am pleased that the Senate voted today on the Defend Trade Secrets Act. I am proud to be an original cosponsor of this legislation, which would create a Federal civil cause of action to help deter and remedy trade secret theft that is costing American businesses hundreds of billions of dollars each year.

Trade secrets, such as manufacturing processes, industrial techniques, and customer lists, are critical assets for U.S. companies. However, American companies are increasingly being targeted by efforts to steal this proprietary information, often by overseas interests. Currently, there is no Federal civil remedy available to companies to fight this theft, and the Justice Department does not have the resources to investigate and prosecute criminally all of the thefts that are taking place. While most States have passed civil trade secret laws, these laws are not well suited for remedying interstate or foreign trade secret theft. The lack of a Federal civil remedy for trade secret misappropriation is a glaring

gap in current law, especially since Federal civil remedies are available to protect other forms of intellectual property such as patents, trademarks, and copyrights.

The Defend Trade Secrets Act would close this gap by creating a civil right of action in Federal court for misappropriation of a trade secret that is related to a product or service used in interstate or foreign commerce. Available remedies would include injunctions, damages, and in certain cases enhanced damages. This broadly bipartisan bill has been carefully crafted to empower companies to protect their trade secrets through a process that will be both swift and fair. By helping American companies safeguard their essential trade secrets from theft, the bill will help keep innovation and jobs in America.

The Defend Trade Secrets Act has been cosponsored by 65 Senators and is supported by groups and companies representing a broad swath of the American economy, including numerous employers based in my home State of Illinois, such as Caterpillar and Illinois Tool Works. I am pleased that the Senate is moving forward with passage of this legislation, and I hope the bill will soon pass the House of Representatives and be signed into law.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Today, the Senate voted on legislation that will provide a valuable tool to protect against trade secret theft. This legislation is supported by businesses from diverse sectors of our economy, including companies large and small.

In Vermont, trade secrets protect the specialized knowledge of woodworkers who have made heirloom products for generations, and cutting-edge start-ups that are shaping the future of plastics, software, and green technology. Trade secrets protect the recipes for Vermont craft brews and closely guarded customer lists for our top tourist services. Today's legislation provides an important tool to protect these innovative businesses in Vermont and across the country.

The Defend Trade Secrets Act contains a bipartisan provision I offered with Senator GRASSLEY to ensure that employers and other entities cannot bully whistleblowers or other litigants by threatening them with a lawsuit for trade secret theft. The provision protects disclosures made in confidence to law enforcement or an attorney for the purpose of reporting a suspected violation of law and disclosures made in the course of a lawsuit, provided that the disclosure is made under seal. It requires employers to provide clear notice of this protection in any non-disclosure agreements they ask individuals to sign. This commonsense public policy amendment is supported by the Project on Government Oversight and the Government Accountability Project and builds upon valuable scholarly work by Professor Peter Menell.

Good, thoughtful work was done in the Senate Judiciary Committee to craft the bill we are voting on today, which builds on earlier versions introduced in prior Congresses. It is a testament to how the Judiciary Committee can and should operate when it functions with regular order. We held a public hearing on the issue of trade secret theft in the Subcommittee on Crime and Terrorism during the 113th Congress and another hearing in the full committee this past December. Senators suggested improvements to the bill, they debated them, and they voted on the legislation.

Unfortunately, the regular order and fair consideration that was given to this legislation is being denied for one of the Senate's most important and solemn responsibilities: considering the Supreme Court nomination pending in the Senate Judiciary Committee. Americans by a 2-to-1 margin want the Senate to move forward with a full and fair process for Chief Judge Garland. The Senate today is coming together to pass trade secrets legislation, but that does nothing to absolve us from doing our jobs by considering the pending Supreme Court nominee. •

Mrs. FEINSTEIN. Mr. President, I wish to express my support for the Defend Trade Secrets Act and to explain some of the changes that were made in the Judiciary Committee to ensure the bill does not adversely impact California.

First, let me congratulate Senators HATCH and COONS on their work on this bill.

This bill will help protect vital trade secrets of American companies by providing a Federal cause of action for the theft of trade secrets. It will ensure there is access to Federal courts in these cases. During consideration of the bill in the Judiciary Committee, some members, including me, voiced concern that the injunctive relief authorized under the bill could override State law limitations that safeguard the ability of an employee to move from one job to another. This is known as employee mobility. Some States, including California, have strong public policies or laws in favor of employee mobility. These are reflected in some State court precedent or in laws that are on the books.

When this bill came before the Judiciary Committee, there was a serious concern that a Federal law without similar limits would override the law in those States and create impairments on employees' ability to move from job to job. If that were to happen, it could be a major limitation on employee mobility that does not exist today. To prevent this, the bill now includes language to preserve the law in California and elsewhere. Specifically, the bill bars an injunction "to prevent a person from entering into an employment relationship," period. In other words, relief under this bill cannot include an injunction barring a person from starting a new job. As I understand it, this

reflects the practice under current law in California.

Secondly, any injunction that is issued cannot be based “merely on the information the person knows.” This language makes clear that any injunctive relief must be based on real evidence of a threat to the trade secrets, not simply on the employee’s knowledge.

Third, the bill also includes language to ensure that any injunction issued under the bill does not “otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business.”

This language will ensure that States are able to protect against the use of this bill to create unlawful restraints on business practices within their States. In fact, California’s strong public policy in favor of employee mobility stems from such a law, which is located at section 16600 in the State’s business and professions code. This law states: “Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.”

As I said in the markup of this bill in the Judiciary Committee and as is noted in the Judiciary Committee’s report, if a State’s trade secrets law authorizes additional remedies beyond what this bill authorizes, those State law remedies will still be available.

I felt it was important to protect California, which has a vibrant and dynamic economy of almost 40 million people in so many sectors.

I am very grateful that Senators HATCH and COONS were willing to accommodate my concerns, and I am pleased to support this bill and to co-sponsor it.

Thank you very much.

ARMS SALES NOTIFICATION

Mr. CORKER. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee’s intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY
COOPERATION AGENCY,
Arlington, VA.

Hon. BOB CORKER,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-26, concerning the Department of the Navy’s proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost \$3.2 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

JENNIFER ZAKRISKI,
(for J. W. Rixey, Vice Admiral, USN,
Director).

Enclosures.

TRANSMITTAL NO. 16-26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Kingdom.

(ii) Total Estimated Value:
Major Defense Equipment * \$1.8 billion.
Other \$1.4 billion.
Total \$3.2 billion.

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

Major Defense Equipment (MDE).
Nine (9) P-8A Patrol Aircraft, which include: Tactical Open Mission Software (TOMS), Electro-Optical (EO) and Infrared (IR) MX-20HD, AN/AAQ-2(V)1 Acoustic System, AN/APY-10 Radar, ALQ-240 Electronic Support Measures (ESM).

Twelve (12) Multifunctional Informational Distribution System (MIDS) Joint Tactical Radio Systems (JTTRS).

Twelve (12) Guardian Laser Transmitter Assemblies (GLTA) for AN/AAQ-24(V)N.

Twelve (12) System Processors for AN/AAQ-24(V)N.

Twelve (12) Missile Warning Sensors for AN/AAR-54 (for AN/AAQ-24(V)N).

Nine (9) LN-251 with Embedded Global Positioning Systems/Inertial Navigation System (EGI).

Non-Major Defense Equipment (Non-MDE): Associated training, training devices, and support.

(iv) Military Department: U.S. Navy (SAN, Basic Aircraft Procurement Case; LVK, Basic Training Devices Case; TGO, Basic Training Case).

(v) Prior Related Cases, if any: UK-P-FBF, total case value \$5.6M, implemented January 27, 2015.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See attached Annex.

(viii) Date Report Delivered to Congress: March 24, 2016.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom—P-8A Aircraft and Associated Support

The Government of the United Kingdom (UK) has requested notification for the possible procurement of up to nine (9) P-8A Patrol Aircraft, associated major defense equipment, associated training, and support. The estimated cost is \$3.2 billion.

The UK is a close ally and an important partner on critical foreign policy and defense issues. The proposed sale will enhance U.S. foreign policy and national security objec-

tives by enhancing the UK’s capabilities to provide national defense and contribute to NATO and coalition operations.

The proposed sale will allow the UK to re-establish its Maritime Surveillance Aircraft (MSA) capability that it divested when it cancelled the Nimrod MRA4 Maritime Patrol Aircraft (MPA) program. The United Kingdom has retained core skills in maritime patrol and reconnaissance following the retirement of the Nimrod aircraft through Personnel Exchange Programs (PEPs). The MSA has remained the United Kingdom’s highest priority unfunded requirement. The P-8A aircraft would fulfill this requirement. The UK will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor involved in this sale is The Boeing Company, Seattle, WA. Implementation of the proposed sale will require approximately sixty-four (64) personnel hired by Boeing to support the program in the United Kingdom. Additional contractors include:

- ViaSat, Carlsbad, CA.
- GC Micro, Petaluma, CA.
- Rockwell Collins, Cedar Rapids, IA.
- Spirit Aero, Wichita, KS.
- Raytheon, Waltham, MA.
- Telephonics, Farmingdale, NY.
- Pole Zero, Cincinnati, OH.
- Northrop Grumman Corp, Falls Church, VA.
- Exelis, McLean, VA.
- Terma, Arlington, VA.
- Symmetrics, Canada.
- Arnprior Aerospace, Canada.
- General Electric, UK.
- Martin Baker, UK.

There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

TRANSMITTAL NO. 16-26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The P-8A aircraft is a militarized version of the Boeing 737-800 Next Generation (NG) commercial aircraft. The P-8A is replacing the P-3C as the Navy’s long-range anti-submarine warfare (ASW), anti-surface warfare (ASuW), intelligence, surveillance, and reconnaissance (ISR) aircraft capable of broad-area, maritime and littoral operations.

2. P-8A mission systems include:

(a) Tactical Open Mission Software (TOMS). TOMS functions include environment planning tactical aids, weapons planning aids, and data correlation. TOMS includes an algorithm for track fusion which automatically correlates tracks produced by on-board and off-board sensors.

(b) Electro-Optical (EO) and Infrared (IR) MX-20HD. The EO/IR system processes visible EO and IR spectrum to detect and image objects.

(c) AN/AAQ-2(V)1 Acoustic System. The Acoustic sensor system is integrated within the mission system as the primary sensor for the aircraft ASW missions. The system has multi-static active coherent (MAC) 64 sonobuoy processing capability and acoustic sensor prediction tools.

(d) AN/APY-10 Radar. The aircraft radar is a direct derivative of the legacy AN/APS-137(V) installed in the P-3C. The radar capabilities include Global Positioning System (GPS), selective availability anti-spoofing, Synthetic Aperture Radar (SAR), and Inverse Synthetic Aperture Radar (ISAR) imagery resolutions, and periscope detection mode.