

Buy American Act

(Mar. 3, 1933, chp. 212 47 Stat. 1520)

SEC. 1. That when used in this title*¹ —

(a) The term “United States”, when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms “public use”, “public building”, and “public work” shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands;

(c) The term “Federal agency” has the meaning given such term by section 3 of the Federal property and Administrative Services Act of 1949(40 U.S.C. 472), which includes the Departments of the Army, Navy, and Air Force.

(41 U.S.C. 10c)

(Amended by 1946 Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 25, 1959, P.L. 86-70 Sec. 43, 73 Stat. 151; July 12, 1960, P.L. 86-624 Sec. 28, 74 Stat. 419; Aug. 23, 1988, P.L. 100-418, Sec. 7005(a), 102 Stat. 1552.)

SEC. 2. Notwithstanding any other provision of law, and unless the head of the Federal agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 32 of the Office of Federal Procurement Policy Act *².

(41 U.S.C. 10a)

(Amended Aug. 23 1988 P.L. 100-418, Sec. 7005(b), 102 Stat. 1553; Oct. 13, 1994, P.L. 103-355, Sec. 4301(b),108 Stat. 3347.)

SEC. 3. (a) Every contract for the construction, alteration, or repair of any public

*¹ This title is an Act of March 3, title III, Buy American Act.

*² 41 U.S.C. 428

building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2 of this Act: *Provided, however,* That if the head of the Federal agency making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a Federal agency which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public. (41 U.S.C. 10b)

(Amended Aug. 23, 1988, P.L. 100-418, Sec. 7005(c), 102 Stat. 1553.)

SEC. 4. (a) A Federal agency shall not award any contract —

(1) for the procurement of an article, material, or supply mined, produced, or manufactured —

(A) in a signatory country that is considered to be a signatory not in good standing of the Agreement pursuant to section 305(f)(3)(A) of the Trade Agreement Act of 1979; or

(B) in a foreign country whose government maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of such Act; or

(2) for the procurement of a service of any contractor or subcontractor that is a citizen or national of a foreign country identified by the President pursuant to section 305(f)(3)(A) or 305(g)(1)(A) of such Act, or is owned or controlled directly or indirectly by citizens or nationals of such a foreign country.

(b) The prohibition on procurement in subsection (a) of this section is subject to

sections 305(h) and 305(j) of such Act and shall not apply—

(1) with respect to services, articles, materials, or supplies procured and used outside the United States and its territories;

(2) notwithstanding section 305(g) of such Act, to an eligible product of a country which is a signatory country unless that country is considered to be a signatory not in good standing pursuant to section 305(f)(3)(A) of such Act; or

(3) notwithstanding section 305(g) of such Act, to a country that is a least developed country (as that term is defined in section 308(6) of that Act).

(c) Notwithstanding subsection (a) of this section, the President or the head of a Federal agency may authorize the award of a contract or class of contracts if the President or the head of the Federal agency—

(1) determines that such action is necessary—

(A) in the public interest;

(B) to avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(C) because there would be or are an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices; and

(2) notifies the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, and the appropriate committees of the House of Representatives, of such determination—

(A) not less than 30 days prior to the date of the award of the contract or the date of authorization of the award of a class of contracts; or

(B) if the agency's need for the service, article, material, or supply is of such urgency that the United States would be seriously injured by delaying the award or authorization, not more than 90 days after the date of such award or authorization.

(d) The authority of the head of a Federal agency under subsection (c) of this section shall not apply to contracts subject to memorandums of understanding entered into by the Department of Defense (or any military department) and a representative of a foreign country (or agency or instrumentality thereof). In the case of any such contracts, any determinations and notice required by subsection (c) of this section shall be made by—

(1) the President, or

(2) if delegated, by the Secretary of Defense or the Secretary of the Army, Navy, or Air Force, subject to review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962.

(e) The authority of the head of a Federal agency under subsection (c) or (d) of this

section may not be delegated.

(f) Nothing in this section shall restrict the application of the prohibition under section 302(a)(1) of the Trade Agreement Act of 1979.

(g)(1) For purposes of this section with respect to construction services, a contractor or subcontractor is owned or controlled directly or indirectly by citizens or nationals of a foreign country if—

(A) 50 percent or more of the voting stock of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(B) the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of the foreign country;

(C) 50 percent or more of the voting stock of the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(D) the case of a corporation —

(i) the number of its directors necessary to constitute a quorum are citizens or nationals of the foreign country; or

(ii) the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(E) in the case of a contractor or subcontractor who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

(2)(A) For purposes of this section, except as provided in paragraph (1), a determination of whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country shall be made in accordance with policy guidance prescribed by the Administrator for Federal Procurement Policy after conducting one or more public hearings at which interested parties may present comments. Sections 556 and 557 of Title 5, United States Code, shall not apply to the conduct of any such hearing.

(B) The Administrator shall include in the policy guidance prescribed under subparagraph (A) definitions, procedures, standards, and rules that, to the extent the Administrator considers appropriate and consistent with the applicability of such policy guidance to all services (other than construction services), is the same as or similar to the definitions, procedures, standards, and rules that the Administrator has developed and issued for the administration of section 109 of the Treasury, Postal Service, and General Government Appropriations Act, 1988 (101 Stat. 1329-434).

* (h) As used in this section —

* Subparagraph (g)(2)(C) and paragraph (g)(3) were repealed by P.L. 103-355, Sec. 7206(a), Oct. 13, 1994, 108 Stst. 3382.

(1) the term “Agreement” means the Agreement on Government Procurement as defined in section 308(1) of the Trade Agreement Act of 1979;

(2) the term “signatory” means a party to the Agreement; and

(3) the term “eligible product” has the meaning given such term by section 308(4) of the Trade Agreement Act of 1979.

(41 U.S.C. 10b-1)

(Added Aug. 23,1988, P.L. 100-418, Sec. 7002(2),102 Stat. 1545; Amended Oct. 13, 1994, P.L. 103-355, Sec. 7206(a), 108 Stat. 3382.)

Sec. 5. This Act may be cited as the “Buy American Act”.

(41 U.S.C. 10a note)

(Added Oct. 13, 1994, P.L. 103-355, Sec. 10005(f)(4), 108 Stat. 3382.)



National Military Establishment Appropriation Act, 1950

(Act of October 29, 1949, ch787.)

SEC. 633. In order to clarify the original intent of Congress, hereafter, section 2 and that part of section 3(a) of such Act preceding the words “*Provided, however,*” of title III of the Act of March 3, 1933 (47 Stat. 1520), shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the Federal agency concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(41 U.S.C. 10d)

(Amended Aug. 23,1988, P.L. 100-418, Sec. 7005(d), 102 Stat. 1553.)

Department of Defense Appropriation Act, 1995

SEC. 8058. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) The Secretary of Defense shall submit to Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 1995. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2) of this section, the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

(41 U.S.C. 10b-2)

(P.L. 103-335, Sec. 8058, Sept. 30, 1994, 108 Stat. 2631.)