

ments Act of 1979. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of this title and Tables.

CODIFICATION

As originally enacted section 3 of Pub. L. 96-39 consisted of subssecs. (a) to (c), (e) and (f), without a provision designated as (d). Subsec. (e) amended section 2111(b)(1) of this title and subsec. (f) has been redesignated as (d) for the purposes of codification of this section.

UNITED STATES-CANADA FREE-TRADE AGREEMENT

Subsec. (c) of this section applicable as if United States-Canada Free-Trade Agreement, which entered into force on Jan. 1, 1989, were an agreement approved under section 2503(a) of this title, see section 102(e) of Pub. L. 100-449, set out in a note under section 2112 of this title.

SUBCHAPTER I—GOVERNMENT PROCUREMENT

§ 2511. General authority to modify discriminatory purchasing requirements

(a) Presidential waiver of discriminatory purchasing requirements

Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) Designation of eligible countries and instrumentalities

The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) Modification or withdrawal of waivers and designations

The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).

(d) Omitted

(e) Procurement procedures by certain Federal agencies

Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a-2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) Small business and minority preferences

The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

(Pub. L. 96-39, title III, §301, July 26, 1979, 93 Stat. 236; Pub. L. 100-418, title VII, §7005(e), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103-182, title III, §381(a), Dec. 8, 1993, 107 Stat. 2128.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-182, §381(a)(1), substituted “Subject to subsection (f) of this section, the President” for “The President”.

Subsec. (b)(1). Pub. L. 103-182, §381(a)(2), inserted “or the North American Free Trade Agreement” after “the Agreement”.

Subsecs. (e), (f). Pub. L. 103-182, §381(a)(3), added subssecs. (e) and (f).

1988—Subsec. (d). Pub. L. 100-418, §§7004, 7005(e), temporarily added subsec. (d) which read as follows: “The authority of the President under subsection (a) of this section to waive any laws, regulation, procedure, or practice shall be effective notwithstanding any other provision of law hereafter enacted (excluding the provisions of and amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.” See Effective and Termination Dates of 1988 Amendment note below.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-182, title III, §381(e), Dec. 8, 1993, 107 Stat. 2129, provided that: “The provisions of this subtitle [subtitle G (§381) of title III of Pub. L. 103-182, amending this section, sections 2512 and 2518 of this title, and provisions set out as a note under section 903 of Title 7, Agriculture] take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].”

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Pub. L. 100-418, title VII, §7004, Aug. 23, 1988, 102 Stat. 1552, provided that: “The amendments made by this title [see Tables for classification] shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979 [former 19 U.S.C. 2515(k)], and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.”

Pub. L. 100-418, title VII, §7005(f), Aug. 23, 1988, 102 Stat. 1553, provided that: “The amendments made by this section [amending this section and sections 10a, 10b, 10c, and 10d of Title 41, Public Contracts] shall take effect upon enactment [Aug. 23, 1988].”

EFFECTIVE DATE

Pub. L. 96-39, title III, §309, July 26, 1979, 93 Stat. 241, provided that: “The provisions of this title [this subchapter] shall be effective on the date of enactment of this Act [July 26, 1979], except that—

“(1) the authority of the President to grant waivers under section 303 [section 2513 of this title] shall be effective on January 1, 1980; and

“(2) the authority of the President to grant waivers under section 301 [this section] shall be effective on January 1, 1981.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1-201 of Ex. Ord. No. 12260, set out as a note below.

EX. ORD. NO. 12260. AGREEMENT ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, as amended by Ex. Ord. No. 12347, Feb. 23, 1982, 47 F.R. 8149; Ex. Ord. No. 12388, Oct. 14, 1982, 47 F.R. 46245; Ex. Ord. No. 12474, Apr. 17, 1984, 49 F.R. 15539; Ex. Ord. No. 13118, §10(7), Mar. 31, 1999, 64 F.R. 16598; Ex. Ord. No. 13284, §12, Jan. 23, 2003, 68 F.R. 4076, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511-2518), and Section 301 of Title 3 of the United States Code, and in order to implement the Agreement on Government Procurement, as defined in 19 U.S.C. 2518(1), it is hereby ordered as follows:

1-1. RESPONSIBILITIES

1-101. The obligations of the Agreement on Government Procurement (Agreement on Government Procurement, General Agreement on Tariffs and Trade, 12 April 1979, Geneva (GATT 1979)) apply to any procurement of eligible products by the Executive agencies listed in the Annex to this Order (eligible products are defined in Section 308 of the Trade Agreements Act of 1979; 19 U.S.C. 2518(4)). Such procurement shall be in accord with the policies and procedures of the Office of Federal Procurement Policy ([former] 41 U.S.C. 401 et seq.).

1-102. The United States Trade Representative, hereinafter referred to as the Trade Representative, shall be responsible for interpretation of the Agreement. The Trade Representative shall seek the advice of the inter-agency organization established under Section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected Executive agencies, including the Office of Federal Procurement Policy.

1-103. The interpretation of Article VIII:1 of the Agreement shall be subject to the concurrence of the Secretary of Defense

1-104. The Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units and shall publish that determination in the Federal Register. Procurement of less than 150,000 Special Drawing Right units is not subject to the Agreement or this Order (Article I:1(b) of the Agreement).

1-105. In order to ensure coordination of international trade policy with regard to the implementation of the Agreement, agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement.

1-2. DELEGATIONS AND AUTHORIZATION

1-201. The functions vested in the President by Sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516) are delegated to the Trade Representative.

1-202. Notwithstanding the delegation in Section 1-201, the Secretary of Defense is authorized, in accord with Section 302(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(b)(3)), to waive the prohibitions specified therein.

ANNEX

1. ACTION
2. Administrative Conference of the United States

3. American Battle Monuments Commission
4. Board for International Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Consumer Product Safety Commission
9. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
10. Department of Commerce
11. Department of Defense (Excludes Corps of Engineers)
12. Department of Education
13. Department of Health and Human Services
14. Department of Homeland Security
15. Department of Housing and Urban Development
16. Department of the Interior (Excludes the Bureau of Reclamation)
17. Department of Justice
18. Department of Labor
19. Department of State
20. Department of the Treasury
21. Environmental Protection Agency
22. Equal Employment Opportunity Commission
23. Executive Office of the President
24. Export-Import Bank of the United States
25. Farm Credit Administration
26. Federal Communications Commission
27. Federal Deposit Insurance Corporation
28. Federal Home Loan Bank Board
29. Federal Maritime Commission
30. Federal Mediation and Conciliation Service
31. Federal Trade Commission
32. General Services Administration (Purchases by the Tools Commodity Center, and the Region 9 Office in San Francisco, California are not included)
33. Interstate Commerce Commission
34. Merit Systems Protection Board
35. National Aeronautics and Space Administration
36. National Credit Union Administration
37. National Labor Relations Board
38. National Mediation Board
39. National Science Foundation
40. National Transportation Safety Board
41. Nuclear Regulatory Commission
42. Office of Personnel Management
43. Overseas Private Investment Corporation
44. Panama Canal Commission
45. Railroad Retirement Board
46. Securities and Exchange Commission
47. Selective Service System
48. Smithsonian Institution
49. United States Arms Control and Disarmament Agency
50. United States Information Agency
51. United States Agency for International Development
52. United States International Trade Commission
53. Veterans Administration
54. Maritime Administration of the Department of Transportation
55. The Peace Corps

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 12849. IMPLEMENTATION OF AGREEMENT WITH EUROPEAN COMMUNITY ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12849, May 25, 1993, 58 F.R. 30931, provided:

WHEREAS, the United States and the European Community (EC) have entered into a Memorandum of Understanding on Government Procurement (Agreement) that provides appropriate reciprocal competitive government procurement opportunities;

WHEREAS, the commitments made in the Agreement are intended to become part of an expanded General Agreement on Tariffs and Trade Agreement on Government Procurement (GATT Code) and are an important step toward an expanded GATT Code;

WHEREAS, as a result of these commitments, U.S. businesses will obtain increased access to EC member state procurement for U.S. goods and services;

WHEREAS, I have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act, as amended ([former] 41 U.S.C. 10a-10d) [see 41 U.S.C. 8301 et seq.], to procurement covered by the Agreement;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-2518), and in order to implement the Agreement, it is hereby ordered as follows:

SECTION 1. In applying the provisions of the Buy American Act, the heads of the agencies listed in Annex 1, Parts A and B, of this order are requested, as of the date of this order, to apply no price differential between articles, materials, or supplies of U.S. origin and those originating in the member states of the EC.

SEC. 2. For purposes of this order, the rule of origin specified in section 308 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2518), shall apply in determining whether goods originate in the member states of the EC.

SEC. 3. This order shall apply only to solicitations, issued by agencies listed in Annex 1, Parts A and B, of this order, above the threshold amounts set forth in Annex 2.

SEC. 4. This order shall apply to solicitations outstanding on the date of this order, except for those for which the initial deadline for receipt of bids or proposals has passed, and to all solicitations issued after the date of this order.

SEC. 5. Except for procurements by the Department of Defense, the United States Trade Representative (USTR) shall be responsible for interpretation of the Agreement. The USTR shall seek the advice of the interagency organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected agencies, including the Office of Federal Procurement Policy.

SEC. 6. This Executive order is effective immediately. Although regulatory implementation of this order must await revisions to the Federal Acquisition Regulation (FAR), it is expected that agencies listed in Annex 1, Parts A and B, of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

SEC. 7. Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302, 1303], the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

WILLIAM J. CLINTON.

ANNEX 1A

Department of Agriculture
 Department of Commerce
 Department of Defense
 Department of Education
 Department of Energy (Not including national security procurement made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act [42 U.S.C. 2011 et seq.]; and oil purchases related to the Strategic Petroleum Reserve)

Department of Health and Human Services
 Department of Housing and Urban Development
 Department of the Interior
 Department of Justice
 Department of Labor
 Department of State
 Department of Transportation (The national security consideration currently applicable to the Department of Defense under the GATT Government Procurement Code is equally applicable under this Agreement to the Coast Guard)
 Department of the Treasury
 United States Agency for International Development
 General Services Administration (other than Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
 National Aeronautics and Space Administration
 Department of Veterans Affairs
 Environmental Protection Agency
 United States Information Agency
 National Science Foundation
 Panama Canal Commission
 Executive Office of the President
 Farm Credit Administration
 National Credit Union Administration
 Merit Systems Protection Board
 ACTION Agency
 United States Arms Control and Disarmament Agency

Office of Thrift Supervision
 Federal Housing Finance Board
 National Labor Relations Board
 National Mediation Board
 Railroad Retirement Board
 American Battle Monuments Commission
 Federal Communications Commission
 Federal Trade Commission
 Interstate Commerce Commission
 Securities and Exchange Commission
 Office of Personnel Management
 United States International Trade Commission
 Export-Import Bank of the United States
 Federal Mediation and Conciliation Service
 Selective Service System
 Smithsonian Institution
 Federal Deposit Insurance Corporation
 Consumer Product Safety Commission
 Equal Employment Opportunity Commission
 Federal Maritime Commission
 National Transportation Safety Board
 Nuclear Regulatory Commission
 Overseas Private Investment Corporation
 Administrative Conference of the United States
 Board for International Broadcasting
 Commission on Civil Rights
 Commodity Futures Trading Commission
 The Peace Corps
 National Archives and Records Administration

ANNEX 1B

The Power Marketing Administrations of the Department of Energy
 Tennessee Valley Authority

ANNEX 2

Thresholds Applicable to Agencies listed in Annex 1A
 Goods contracts—130,000 SDRs (currently \$176,000)
 Construction contracts—\$6,500,000
 Thresholds Applicable to Agencies listed in Annex 1B
 Goods contracts—\$450,000
 Construction contracts—\$6,500,000
 [For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]
 [For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

§ 2512. Authority to encourage reciprocal competitive procurement practices

(a) Authority to bar procurement from non-designated countries

(1) In general

Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) Exception

Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) Deferrals and waivers

Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 1872(a) of this title, such prohi-

biton for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 2155 of this title and with the appropriate committees of the Congress.

(c) Report on impact of restrictions

(1) Impact on the economy

On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity

The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of chapter 83 of title 41. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 2514(a) and (b) of this title, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation

In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 2155 of this title.

(d) Proposed action

(1) Presidential report

On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity