

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 2512 of this title.

§ 2517. Availability of information to Members of Congress designated as official advisers

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 2211 of this title information compiled by the Committee on Government Procurement under article XIX(5) of the Agreement.

(Pub. L. 96-39, title III, §307, July 26, 1979, 93 Stat. 240; 1979 Reorg. Plan No. 3, §1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381; Pub. L. 103-465, title III, §342(e), Dec. 8, 1994, 108 Stat. 4953.)

AMENDMENTS

1994—Pub. L. 103-465 substituted “article XIX(5)” for “part VI, paragraph 9.”

CHANGE OF NAME

“United States Trade Representative” substituted in text for “Special Representative for Trade Negotiations” pursuant to Reorg. Plan No. 3 of 1979, §1(1)(b), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97-456.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

§ 2518. Definitions

As used in this subchapter—

(1) Agreement

The term “Agreement” means the Agreement on Government Procurement referred to in section 3511(d)(17) of this title, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) Civil aircraft

The term “civil aircraft and related articles” means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture,

repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) Developed countries

The term “developed countries” means countries so designated by the President.

(4) Eligible product

(A) In general

The term “eligible product” means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States;

(ii) Mexico, as a party to the USMCA (as defined in section 4502 of this title), a product or service of that country or instrumentality which is covered under the USMCA for procurement by the United States;

(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;

(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States;

(v) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;

(vi) a party to the United States-Oman Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States;

(vii) a party to the United States-Peru Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States;

(viii) a party to the United States-Korea Free Trade Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States;

(ix) a party to the United States-Colombia Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States; or

(x) a party to the United States-Panama Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

(B) Rule of origin

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) Lowered threshold for certain products as a consequence of United States-Israel free trade area provisions

The term “eligible product” includes a product or service of Israel for which the United States is obligated to waive Buy National restrictions under—

(i) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, regardless of the thresholds provided for in the Agreement (as defined in paragraph (1)), or

(ii) any subsequent agreement between the United States and Israel which lowers on a reciprocal basis the applicable threshold for entities covered by the Agreement.

(D) Lowered threshold for certain products as a consequence of United States-Canada Free-Trade Agreement

Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term “eligible product” includes a product or service of Canada having a contract value of \$25,000 or more that would be covered for procurement by the United States under the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.

(5) Instrumentality

The term “instrumentality” shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) Least developed country

The term “least developed country” means any country on the United Nations General Assembly list of least developed countries.

(7) Major industrial country

The term “major industrial country” means any such country as defined in section 2136 of this title and any instrumentality of such a country.

(Pub. L. 96-39, title III, §308, July 26, 1979, 93 Stat. 241; Pub. L. 99-47, §7, June 11, 1985, 99 Stat. 84; Pub. L. 100-449, title III, §306, Sept. 28, 1988, 102 Stat. 1876; Pub. L. 103-182, title III, §381(c), Dec. 8, 1993, 107 Stat. 2129; Pub. L. 103-465, title III, §342(f), Dec. 8, 1994, 108 Stat. 4953; Pub. L. 104-295, §20(c)(12), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 108-286, title IV, §401, Aug. 3, 2004, 118 Stat. 950; Pub. L. 109-53, title IV, §401, Aug. 2, 2005, 119 Stat. 495; Pub. L. 109-169, title IV, §401,

Jan. 11, 2006, 119 Stat. 3599; Pub. L. 109-283, title IV, §401, Sept. 26, 2006, 120 Stat. 1209; Pub. L. 110-138, title IV, §401, Dec. 14, 2007, 121 Stat. 1486; Pub. L. 112-41, title IV, §401, Oct. 21, 2011, 125 Stat. 459; Pub. L. 112-42, title IV, §401, Oct. 21, 2011, 125 Stat. 494; Pub. L. 112-43, title IV, §401, Oct. 21, 2011, 125 Stat. 529; Pub. L. 116-113, title V, §505(b), Jan. 29, 2020, 134 Stat. 77.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 112-43, see Effective and Termination Dates of 2011 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 112-42, see Effective and Termination Dates of 2011 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 112-41, see Effective and Termination Dates of 2011 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 110-138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 109-283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109-169, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109-53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 108-286, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 501(c) of Pub. L. 100-449, see Effective and Termination Dates of 1988 Amendment note below.

REFERENCES IN TEXT

Section 601(a)(2), referred to in par. (2), is section 601(a)(2) of Pub. L. 96-39 title VI, July 26, 1979, 93 Stat. 267, which directed a duty rate of “Free” in the rate column numbered 1 of the Tariff Schedules of the United States for articles classified under specified items between 518.51 and 772.65 which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles were certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States, which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of the title.

AMENDMENTS

2020—Par. (4)(A)(ii). Pub. L. 116-113 substituted “Mexico, as a party to the USMCA (as defined in section 4502 of this title),” for “a party to the North American Free Trade Agreement,” and “the USMCA for” for “the North American Free Trade Agreement for”.

2011—Par. (4)(A)(viii). Pub. L. 112-41, §§107(c), 401, temporarily added cl. (viii). See Effective and Termination Dates of 2011 Amendment note below.

Par. (4)(A)(ix). Pub. L. 112-42, §§107(c), 401, temporarily added cl. (ix). See Effective and Termination Dates of 2011 Amendment note below.

Par. (4)(A)(x). Pub. L. 112-43, §§107(c), 401, temporarily added cl. (x). See Effective and Termination Dates of 2011 Amendment note below.

2007—Par. (4)(A)(vii). Pub. L. 110-138, §§107(c), 401, temporarily added cl. (vii). See Effective and Termination Dates of 2007 Amendment note below.

2006—Par. (4)(A)(v). Pub. L. 109-169, §§106(c), 401, temporarily added cl. (v). See Effective and Termination Dates of 2006 Amendment note below.

Par. (4)(A)(vi). Pub. L. 109-283, §§107(c), 401, temporarily added cl. (vi). See Effective and Termination Dates of 2006 Amendment note below.

2005—Par. (4)(A)(iv). Pub. L. 109-53, §§107(d), 401, temporarily added cl. (iv). See Effective and Termination Dates of 2005 Amendment note below.

2004—Par.(4)(A)(iii). Pub. L. 108-286, §§106(c), 401, temporarily added cl. (iii). See Effective and Termination Dates of 2004 Amendment note below.

1996—Par. (4)(D). Pub. L. 104-295 substituted “under the Agreement” for “under the the Agreement”.

1994—Par. (1). Pub. L. 103-465, §342(f)(1), substituted “section 3511(d)(17) of this title” for “section 2503(c) of this title”.

Par. (4)(C). Pub. L. 103-465, §342(f)(2)(A), substituted “for which the United States is obligated to waive Buy National restrictions under—” and cls. (i) and (ii) for “having a contract value of \$50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.”

Par. (4)(D). Pub. L. 103-465, §342(f)(2)(B), substituted “the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.” for “GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.”

1993—Par. (4)(A). Pub. L. 103-182 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘eligible product’ means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.”

1988—Par. (4)(D). Pub. L. 100-449 temporarily added subpar. (D). See Effective and Termination Dates of 1988 Amendment note below.

1985—Par. (4)(C). Pub. L. 99-47 added subpar. (C).

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116-113 effective on the date on which the USMCA enters into force (July 1, 2020) and applicable with respect to a procurement on or after that date, see section 505(c) of Pub. L. 116-113, set out as a note under section 2511 of this title.

EFFECTIVE AND TERMINATION DATES OF 2011 AMENDMENT

Amendment by Pub. L. 112-43 effective Oct. 21, 2011, applicable with respect to Panama on the date the United States-Panama Trade Promotion Agreement enters into force (Oct. 31, 2012), and to cease to be effective on the date the Agreement terminates, see section 107(b), (c) of Pub. L. 112-43, set out in a note under section 3805 of this title.

Amendment by Pub. L. 112-42 effective Oct. 21, 2011, applicable with respect to Colombia on the date the United States-Colombia Trade Promotion Agreement enters into force (May 15, 2012), and to cease to be effective on the date the Agreement terminates, see section 107(b), (c) of Pub. L. 112-42, set out in a note under section 3805 of this title.

Amendment by Pub. L. 112-41 effective Oct. 21, 2011, applicable with respect to Korea on the date the United States-Korea Free Trade Agreement enters into force (Mar. 15, 2012), and to cease to be effective on the date the Agreement terminates, see section 107(b), (c) of Pub. L. 112-41, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110-133 effective on the date the United States-Peru Trade Promotion Agreement

enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110-133, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by Pub. L. 109-283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109-169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 109-169, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109-53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109-53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by Pub. L. 108-286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108-286, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 381(e) of Pub. L. 103-182, formerly set out as a note under section 2511 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—TECHNICAL BARRIERS TO
TRADE (STANDARDS)

PART A—OBLIGATIONS OF THE UNITED STATES

§ 2531. Certain standards-related activities

(a) No bar to engaging in standards activity

Nothing in this subchapter may be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.

(b) Unnecessary obstacles

Nothing in this subchapter may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

(Pub. L. 96-39, title IV, §401, July 26, 1979, 93 Stat. 242; Pub. L. 103-465, title III, §351(b), Dec. 8, 1994, 108 Stat. 4955.)

AMENDMENTS

1994—Pub. L. 103-465 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title III, §352, Dec. 8, 1994, 108 Stat. 4957, provided that: "This subtitle [subtitle F (§§351, 352) of title III of Pub. L. 103-465, amending this section and sections 2532, 2544, 2571, and 2573 of this title and repealing provisions set out below] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

EFFECTIVE DATE

Pub. L. 96-39, title IV, §454, July 26, 1979, 93 Stat. 250, which provided that this subchapter was to take effect on Jan. 1, 1980, if the Agreement on Technical Barriers to Trade entered into force with respect to the United States by that date, was repealed by Pub. L. 103-465, title III, §351(g), Dec. 8, 1994, 108 Stat. 4957.

§ 2532. Federal standards-related activities

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) Nondiscriminatory treatment

Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) Use of international standards

(A) In general

Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) Application of requirement

For purposes of this paragraph, the following apply:

(i) International standards not appropriate

The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) Regional standards

In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii)¹ of this title.

(3) Performance criteria

Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) Access for foreign suppliers

Each Federal agency shall, with respect to any conformity assessment procedure used by

¹ See References in Text note below.