

PART D -- MISCELLANEOUS

CHAPTER 491 -- BUY-AMERICAN PREFERENCES

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Sec. 49101. Buying goods produced in the United States

(a) Preference. -- The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) Waiver. -- The Secretary may waive subsection (a) of this section if the Secretary finds that --

(1) applying subsection (a) would be inconsistent with the public interest;

(2) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3) when procuring a facility or equipment under section 44502(a)(2) or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title --

(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B) final assembly of the facility or equipment has occurred in the United States; or

(4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c) Labor Costs. -- In this section, labor costs involved in final assembly are not included in calculating the cost of components.

Sec. 49102. Restricting contract awards because of discrimination against United States goods or services

A person or enterprise domiciled or operating under the laws of a foreign country may not make a contract or subcontract under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-353) if the government of that country unfairly maintains, in government procurement, a significant and persistent pattern of

discrimination against United States goods or services that results in identifiable harm to United States businesses, that the President identifies under section 305(g)(1)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

Sec. 49103. Contract preference for domestic firms

(a) Definitions. -- In this section --

(1) "domestic firm" means a business entity incorporated, and conducting business, in the United States.

(2) "foreign firm" means a business entity not described in clause (1) of this subsection.

(b) Preference. -- Subject to subsections (c) and (d) of this section, the Administrator of the Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if --

(1) the Administrator decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) Nonapplication. -- Subsection (b) of this section does not apply if --

(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(d) Application to Certain Grants. -- This section applies only to a contract related to a grant made under sections 4511, 44512, or 44513 of this title for which --

(1) an amount is authorized by section 48102(a), (b), or (d) of this title to be made available for the fiscal years ending September 30, 1991, and September 30, 1992; and

(2) a solicitation for bid is issued after November 5, 1990.

(e) Report. -- The Administrator shall submit a report to Congress on --

(1) contracts to which this section applies that are made with foreign firms in the fiscal years ending September 30, 1991, and September 30, 1992;

(2) the number of contracts that meet the requirements of subsection (b) of this section, but that the Trade Representative decides would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party; and

(3) the number of contracts made under this section.

Sec. 49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities

(a) Definition and Rules for Construing Section. -- In this section --

(1) "project" has the same meaning given that term in section 47102 of this title.

(2) each foreign instrumentality and each territory and possession of a foreign country administered separately for customs purposes is a separate foreign country.

(3) an article substantially produced or manufactured in a foreign country is a product of the country.

(4) a service provided by a person that is a national of a foreign country or that is controlled by a national of a foreign country is a service of the country.

(b) Limitation on Use of Available Amounts. -- (1) An amount made available under subchapter I of chapter 471 of this title (except sections 47106(d) and 47127) may not be used for a project that uses a product or service of a foreign country during any period the country is on the list maintained by the United States Trade Representative under subsection (d)(1) of this section.

(2) Paragraph (1) of this subsection does not apply when the Secretary of Transportation decides that --

(A) applying paragraph (1) to the product, service, or project is not in the public interest;

(B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and

(C) the project cost will increase by more than 20 percent if the product or service is excluded.

(c) Decisions on Denial of Fair Market Opportunities. -- Not later than 30 days after a report is submitted to Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the Trade Representative, for a construction project of more than \$500,000 for which the government of a foreign country supplies any part of the amount, shall decide whether the foreign country denies fair market opportunities for products and suppliers of the United States in procurement or for United States bidders. In making the decision, the Trade Representative shall consider information obtained in preparing the report and other information the Trade Representative considers relevant.

(d) List of Countries Denying Fair Market Opportunities. --

(1) The Trade Representative shall maintain a list of each foreign country the Trade Representative finds under subsection (c) of this section is denying fair market opportunities. The country shall remain on the list until the Trade Representative decides the country provides fair market opportunities.

(2) The Trade Representative shall publish in the Federal Register --

(A) annually the list required under paragraph (1) of this subsection; and

(B) any modification of the list made before the next list is published.

Sec. 49105. Fraudulent use of "Made in America" label

If the Secretary of Transportation decides that a person intentionally affixed a "Made in America" label to goods sold in or shipped to the United States that are not made in the United States, the Secretary shall declare the person ineligible, for not less than 3 nor more than 5 years, to receive a contract or grant from the United States Government related to a contract made under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-353). The Secretary may bring a civil action to enforce this section in any district court of the United States.