

(4) **EFFECT ON THE INFRASTRUCTURE OF SCIENCE AND ENGINEERING.**—This criterion relates to the potential of the proposed project to contribute to better understanding or improvement of the quality, distribution, effectiveness of the Nation's scientific and engineering research, education, and manpower base.

(e) **CONSULTATIONS.**—In prescribing regulations and conducting the program under this section, the Director of the National Science Foundation shall consult with the Secretary of Education and other related agencies.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—Such sums shall be available for the College Science Instrumentation Program subject every year to the authorizations and appropriations for the National Science Foundation.

## TITLE VII—BUY AMERICAN ACT OF 1988

Buy American Act of 1988.  
Contracts.

41 USC 10a note.

### SEC. 7001. SHORT TITLE.

This title may be cited as the "Buy American Act of 1988".

### SEC. 7002. AMENDMENTS TO THE BUY AMERICAN ACT.

Title III of the Act of March 3, 1933 (41 U.S.C. 10a-10d), is amended—

(1) by redesignating sections 4 and 5 as sections 5 and 6, respectively; and

41 USC 10c notes.

(2) by inserting after section 3 the following new section:

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

41 USC 10b-1.

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

Minerals and mining.

"(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 Agreements 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) 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) 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) 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 (19 U.S.C. 1872(a)).

“(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 Agreements 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).

“(C) The policy guidance required by subparagraph (A) shall be prescribed not later than 180 days after the date of enactment of this subsection.

“(3)(A) The Administrator for Federal Procurement Policy shall conduct an assessment of the current rules under this Act for making determinations of country of origin and alternatives to such rules. Such assessment shall identify and evaluate (i) reasonable alternatives to such rules of origin, including one or more alternative rules that require a determination on the basis of total cost, and (ii) the specific cost factors that should be included in determining total cost.

“(B) In conducting the analysis, the Administrator shall consult and seek comment from representatives of United States labor and business, other interested United States persons, and other Federal agencies. The Administrator shall hold public hearings for the purpose of obtaining such comment, and a transcript of such hearings shall be appended to the report required by subparagraph (C).

“(C) A report on the results of the analysis shall be submitted to the appropriate committees of the House of Representatives and to the Committee on Governmental Affairs and other appropriate committees of the Senate not later than 18 months after the date of enactment of this subsection. Such report shall include proposed policy guidance or any recommended legislative changes on the factors to be used in making determinations of country of origin.

Reports.

“(h) As used in this section—

“(1) the term ‘Agreement’ means the Agreement on Government Procurement as defined in section 308(1) of the Trade Agreements 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 Agreements Act of 1979 (19 U.S.C. 2518(4)).”

President of U.S. **SEC. 7003. PROCEDURES TO PREVENT GOVERNMENT PROCUREMENT DISCRIMINATION.**

Section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515) is amended by adding at the end thereof the following:

**“(d) ANNUAL REPORT ON FOREIGN DISCRIMINATION.—**

**“(1) ANNUAL REPORT REQUIRED.—**The President shall, no later than April 30, 1990, and annually on April 30 thereafter, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

**“(2) IDENTIFICATIONS REQUIRED.—**In the annual report, the President shall identify (and continue to identify subject to subsections (f)(5) and (g)(3)) any countries, other than least developed countries, that—

**“(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;**

**“(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government; or**

**“(C)(i) are not signatories to the Agreement; (ii) maintain, 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; and (iii) whose products or services are acquired in significant amounts by the United States Government.**

**“(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—**In making the identifications required by paragraph (1), the President shall—

**“(A) use the requirements of the Agreement, government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;**

**“(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (1) of this subsection—**

**“(i) use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures;**

**“(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement’s value threshold or to make the procurements less attractive to United States businesses;**

“(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

“(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

“(C) use any other additional criteria deemed appropriate.

“(4) **CONTENTS OF REPORTS.**—The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (1), the following:

“(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement with which the country is not in compliance;

“(B) an identification of the United States products or services that are affected by the noncompliance or discrimination;

“(C) an analysis of the impact of the noncompliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

“(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

“(5) **INFORMATION AND ADVICE FROM GOVERNMENT AGENCIES AND UNITED STATES BUSINESSES.**—In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and from United States businesses in the United States and in countries that are signatories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

“(6) **IMPACT OF NONCOMPLIANCE.**—The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement or of other discrimination on United States commerce and the extent to which such noncompliance or discrimination has impeded the ability of United States suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

“(7) **IMPACT ON PROCUREMENT COSTS.**—Such report shall also include an analysis of the impact on United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (f) or (g) of this section.

“(e) **CONSULTATION.**—No later than the date the annual report is submitted under subsection (d)(1), the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices unless the country is identified as

discriminatory pursuant to section 305(d)(1) in the preceding annual report.

**“(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF THE AGREEMENT.—**

**“(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—**If, within 60 days after the annual report is submitted under subsection (d)(1), a signatory country identified pursuant to subsection (d)(1)(A) has not complied with the Agreement, then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under section 305(d)(1) as not in compliance in a preceding annual report.

**“(2) SETTLEMENT OF DISPUTES.—**If, before the end of a year following the initiation of dispute settlement procedures—

**“(A)** the other participant to the dispute settlement procedures has complied with the Agreement,

**“(B)** the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, or

**“(C)** the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

**“(3) SANCTIONS AFTER FAILURE OF DISPUTE RESOLUTION.—**If the dispute settlement procedures initiated pursuant to this subsection with any signatory country to the Agreement are not concluded within one year from their initiation or the country has not met the requirements of paragraph (2)(A) or (2)(B), then—

**“(A)** from the end of such one year period, such signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 4 of the Act of March 3, 1933, shall apply to such country; and

**“(B)** on the day after the end of such one year period, the President shall revoke the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 301(a) of this Act.

**“(4) WITHHOLDING AND MODIFICATION OF SANCTIONS.—**If the President determines that imposing or continuing the sanctions required by subparagraph (A) or (B) of paragraph (3) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with the Agreement by that signatory country—

**“(A)** withhold the imposition of either (but not both) of such sanctions;

**“(B)** modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

**“(C)** take any combination of the actions permitted by subparagraph (A) or (B) of this paragraph.

**“(5) TERMINATION OF SANCTIONS AND REINSTATEMENT OF WAIVERS.—**The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discrimina-

tory purchasing requirements granted to that signatory country pursuant to section 301(a) of this Act, and remove that country from the report under subsection (d)(1) of this section at such time as the President determines that—

“(A) the signatory country has complied with the Agreement;

“(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

“(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

“(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

“(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1), a country that is identified pursuant to subparagraph (B) or (C) of such subsection has not eliminated their discriminatory procurement practices, then, on the day after the end of such 60-day period—

“(A) the President shall identify such country as a country that 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; and

“(B) the prohibition on procurement contained in section 4 of the Act of March 3, 1933, shall apply to such country.

“(2) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

“(3) TERMINATION OF SANCTIONS.—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (d)(2) (B) or (C).

“(h) LIMITATIONS ON IMPOSING SANCTIONS.—

“(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) of this section if the President determines that such action—

“(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

“(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices.

“(2) ADVICE FROM U.S. AGENCIES AND BUSINESSES.—The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 242(a) of the Trade

Expansion Act of 1962 and the advice of United States businesses and other interested parties.

“(i) **RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.**—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement that will secure full and open competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98-369; 98 Stat. 1175).

“(j) **FEDERAL REGISTER NOTICES OF ACTIONS.**—

“(1) **NOTICES REQUIRED.**—A notice shall be published in the Federal Register on the date of any action under this section, describing—

“(A) the results of dispute settlement proceedings under subsection (f)(2);

“(B) any sanction imposed under subsection (f)(3) or (g)(1);

“(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2); and

“(D) the termination of any sanction under subsection (f)(5) or (g)(3).

“(2) **PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.**—A notice describing the termination of any sanction under subsection (f)(5) or (g)(3) shall include a copy of the President’s determination under such subsection.

“(k) **GENERAL REPORT ON ACTIONS UNDER THIS SECTION.**—

“(1) **ADVICE TO THE CONGRESS.**—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the the appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

“(2) **CONTENTS OF REPORT.**—The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (e), (f), and (g) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

“(3) **LEGISLATIVE RECOMMENDATIONS.**—The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.”

41 USC 10a note. **SEC. 7004. SUNSET PROVISION.**

The amendments made by this title 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, 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.

**SEC. 7005. CONFORMING AMENDMENTS.**

(a) **DEFINITION OF FEDERAL AGENCY.**—The first section of the Act of March 3, 1933 (41 U.S.C. 10c), is amended—

(1) by striking out the period at the end of paragraph (b) and inserting a semicolon; and

(2) by adding at the end thereof the following:

“(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.

(b) AMENDMENTS TO SECTION 2.—Section 2 of such Act (41 U.S.C. 10a) is amended by striking out “department or independent establishment” and inserting “Federal agency”.

(c) AMENDMENTS TO SECTION 3.—Section 3 of such Act (41 U.S.C. 10b) is amended—

(1) by striking out “department or independent establishment” in such subsection and inserting “Federal agency”; and

(2) by striking out “department, bureau, agency, or independent establishment” in subsection (b) and inserting “Federal agency”.

(d) ADDITIONAL CONFORMING AMENDMENTS.—Section 633 of the Act of October 29, 1949 (41 U.S.C. 10d) is amended by striking out “department or independent establishment” and inserting “Federal agency”.

(e) SECTION 301 WAIVER AUTHORITY.—Section 301 of the Trade Agreements Act of 1979 is amended by adding at the end thereof the following:

19 USC 2511.

“(d) LIMITATIONS ON WAIVER AUTHORITY NOT EFFECTIVE UNLESS PROVISION AMENDED.—The authority of the President under subsection (a) 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.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect upon enactment.

41 USC 10a note.

## TITLE VIII—SMALL BUSINESS

Small Business  
International  
Trade and  
Competitiveness  
Act.  
15 USC 631 note.

### SEC. 8001. SHORT TITLE.

This title may be cited as the “Small Business International Trade and Competitiveness Act”.

### SEC. 8002. DECLARATION OF POLICY.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by redesignating subsections (b) through (e) as subsections (c) through (f), respectively, and by inserting after subsection (a) the following:

“(b)(1) It is the declared policy of the Congress that the Federal Government, through the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this Act, to increase their ability to compete in international markets by—

“(A) enhancing their ability to export;

“(B) facilitating technology transfers;

“(C) enhancing their ability to compete effectively and efficiently against imports;

“(D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;