

## TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

## PROHIBITION ON USE OF FUNDS FOR CONSTRUCTION CONTRACTS WITH CONTRACTORS OF FOREIGN COUNTRIES WHICH DENY UNITED STATES CONTRACTORS FAIR OPPORTUNITIES IN CONSTRUCTION PROJECTS OF THAT COUNTRY'S GOVERNMENT

Provisions prohibiting the obligation or expenditure of funds to enter into any contract for construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country denies fair and equitable market opportunities for products and services of the United States in procurement or bidding for construction projects that cost more than \$500,000 and are funded in whole or in part by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country were contained in the following appropriation acts:

Pub. L. 101-516, title III, §340, Nov. 5, 1990, 104 Stat. 2187.

Pub. L. 101-514, title V, §511, Nov. 5, 1990, 104 Stat. 2098.

Pub. L. 100-202, §109, Dec. 22, 1987, 101 Stat. 1329-434;

Pub. L. 105-362, title XIV, §1401(d), Nov. 10, 1998, 112 Stat. 3294.

## § 10b-1. Omitted

## CODIFICATION

Section, act Mar. 3, 1933, ch. 212, title III, §4, as added Aug. 23, 1988, Pub. L. 100-418, title VII, §7002(2), 102 Stat. 1545; amended Oct. 13, 1994, Pub. L. 103-355, title VII, §7206(a), 108 Stat. 3382, which related to prohibition on procurement contracts, was omitted in view of section 7004 of Pub. L. 100-418 which provided that the amendment by Pub. L. 100-418 enacting this section ceased to be effective on Apr. 30, 1996. See section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

Another prior section 4 of act Mar. 3, 1933, was temporarily renumbered section 5 and is set out as a note under section 10c of this title.

## § 10b-2. Limitation on authority to waive Buy American Act requirement

## (a) Buy American Act waiver rescissions

(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) Definition

For purposes of this section, the term "Buy American Act" means title III of the Act enti-

tled "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.).

(Pub. L. 103-160, div. A, title VIII, §849(c), (d), Nov. 30, 1993, 107 Stat. 1725.)

## REFERENCES IN TEXT

The Buy American Act, referred to in text, is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, and 10c of this title, and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

## CODIFICATION

Subsecs. (a) and (b) were in the original subsecs. (c) and (d), respectively, and were editorially redesignated for purposes of codification.

Pub. L. 103-160, §849(c), (d), which comprises this section, was formerly set out as a note under this section.

## SIMILAR PROVISIONS

Provisions similar to those in this section and section 10b-3 of this title were contained in the following acts:

Pub. L. 108-287, title VIII, §8032, Aug. 5, 2004, 118 Stat. 977.

Pub. L. 108-87, title VIII, §8033, Sept. 30, 2003, 117 Stat. 1079.

Pub. L. 107-248, title VIII, §8033, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107-117, div. A, title VIII, §8036, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106-259, title VIII, §8036, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106-79, title VIII, §8038, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105-262, title VIII, §8038, Oct. 17, 1998, 112 Stat. 2305.

Pub. L. 105-56, title VIII, §8040, Oct. 8, 1997, 111 Stat. 1229.

Pub. L. 104-208, div. A, title I, §101(b) [title VIII, §8042], Sept. 30, 1996, 110 Stat. 3009-71, 3009-97.

Pub. L. 104-61, title VIII, §8051, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103-335, title VIII, §8058, Sept. 30, 1994, 108 Stat. 2631.

Pub. L. 103-139, title VIII, §8069, Nov. 11, 1993, 107 Stat. 1455.

Pub. L. 102-396, title IX, §9096, Oct. 6, 1992, 106 Stat. 1924, as amended by Pub. L. 103-355, title VII, §7206(b), Oct. 13, 1994, 108 Stat. 3382.

Pub. L. 102-190, div. A, title VIII, §833, Dec. 5, 1991, 105 Stat. 1447.

Pub. L. 102-172, title VIII, §8123, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101-189, div. A, title VIII, §823, Nov. 29, 1989, 103 Stat. 1504.

## § 10b-3. Annual report relating to Buy American Act

The Secretary of Defense shall submit to Congress, not later than 60 days after the end of each fiscal year, a report on the amount of purchases by the Department of Defense from foreign entities in that fiscal year. Such report shall separately indicate the dollar value of items for which the Buy American Act (41 U.S.C. 10a et seq.) was waived pursuant to any of the following:

(1) Any reciprocal defense procurement memorandum of understanding described in section 849(c)(2) of Public Law 103-160 (41 U.S.C. 10b-2 note).

(2) The Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.)

(3) Any international agreement to which the United States is a party.

(Pub. L. 104-201, div. A, title VIII, §827, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105-85, div. A, title VIII, §846, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 105-261, div. A, title VIII, §812, Oct. 17, 1998, 112 Stat. 2086.)

#### REFERENCES IN TEXT

The Buy American Act, referred to in text, is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, and 10c of this title, and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

Section 849(c)(2) of Pub. L. 103-160, referred to in par. (1), which was formerly set out as a note under section 10b-2 of this title, was transferred and is classified to section 10b-2(a)(2) of this title.

The Trade Agreements Act of 1979, referred to in par. (2), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

#### AMENDMENTS

1998—Pub. L. 105-261 substituted “60 days” for “90 days” in introductory provisions.

1997—Pub. L. 105-85 substituted “90 days” for “120 days” in introductory provisions.

#### SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the acts listed in the Similar Provisions note set out under section 10b-2 of this title.

### § 10c. Definition of terms used in sections 10a, 10b, and 10c

When used in sections 10a, 10b, and 10c of this title—

(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.

(Mar. 3, 1933, ch. 212, title III, §1, 47 Stat. 1520; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86-70, §43, June 25, 1959, 73 Stat. 151; Pub. L. 86-624, §28, July 12, 1960, 74 Stat. 419; Pub. L. 100-418, title VII, §7005(a), Aug. 23, 1988, 102 Stat. 1552.)

#### REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

#### CODIFICATION

Words “the Philippine Islands” in subsec. (b) of this section were deleted as obsolete in view of recognition of independence of the Philippines by Proc. No. 2695, which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under section 1394.

#### AMENDMENTS

1988—Subsec. (c). Pub. L. 100-418, §§7004, 7005(a), temporarily added subsec. (c) which read as follows: “The

term ‘Federal agency’ has the meaning given such term by section 472 of title 40, which includes the Departments of the Army, Navy, and Air Force.” See Termination Date of 1988 Amendment note below.

1960—Subsec. (b). Pub. L. 86-624 struck out Hawaii.

1959—Subsec. (b). Pub. L. 86-70 struck out Alaska.

#### TERMINATION DATE OF 1988 AMENDMENT

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#### EFFECTIVE DATE

Section 4 of title III of act Mar. 3, 1933, as temporarily renumbered §5 by Pub. L. 100-418, title VII, §7002(1), Aug. 23, 1988, 102 Stat. 1545, provided: “This title [enacting this section and sections 10a and 10b of this title] shall take effect on the date of its enactment [Mar. 3, 1933], but shall not apply to any contract entered into prior to such effective date.”

#### SEPARABILITY

Section 5 of title III of act Mar. 3, 1933, as temporarily renumbered §6 by Pub. L. 100-418, title VII, §7002(1), Aug. 23, 1988, 102 Stat. 1545, provided: “If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby.”

### § 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b(a) of this title preceding the words “*Provided, however,*” 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 department or independent establishment concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(Oct. 29, 1949, ch. 787, title VI, §633, 63 Stat. 1024; Pub. L. 100-418, title VII, §7005(d), Aug. 23, 1988, 102 Stat. 1553.)

#### AMENDMENTS

1988—Pub. L. 100-418, §§7004, 7005(d), temporarily substituted “Federal agency” for “department or independent establishment”. See Termination Date of 1988 Amendment note below.

#### TERMINATION DATE OF 1988 AMENDMENT

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#### EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

SECTION 1. As used in this order, (a) the term “materials” includes articles and supplies, (b) the term “ex-