''(c) DEFINITIONS.—For the purposes of this section, the term 'domestic product' means a product—

''(1) that is manufactured or produced in the United States; and

''(2) at least 50 percent of the cost of the articles, materials, or supplies of which are mined, produced, or manufactured in the United States.''

Similar provisions were contained in the following prior authorization act: Pub. L. 102–581, title III, § 305, Oct. 31, 1992, 106 Stat. 4896.

PURCHASE OF AMERICAN MADE EQUIPMENT AND PRODUCTS

Pub. L. 103–305, title III, § 306, Aug. 23, 1994, 108 Stat. 1593, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that any recipient of a grant under this title [enacting section 47509 of this title, amending sections 44505 and 48102 of this title, and enacting provisions set out as notes under this section and section 40101 of this title], or under any amendment made by this title, should purchase, when available and cost-effective, American made equipment and products when expending grant monies.

''(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In allocating grants under this title, or under any amendment made by this title, the Secretary shall provide to each recipient a notice describing the statement made in subsection (a) by the Congress.''

§ 50102. 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 section 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)).

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1298, § 49102; renumbered § 50102 and amended Pub. L. 104–287, § 5(88)(D), (89), Oct. 11, 1996, 110 Stat. 3398.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
49102	49 App.:2226c.	Nov. 5, 1990, Pub. L. 101–508, § 9131, 104 Stat. 1388–372; Oct. 31, 1992, Pub. L. 102–581, § 118(b), 106 Stat. 4883.

The words ''government of that country'' are substituted for ''that government'' for consistency in the revised title and with other titles of the United States Code.

PUB. L. 104–287, § 5(89)

This makes a clarifying amendment to 49:50101(a) and (b)(3), 50102, 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 49:47106(d) was struck by section 108(1) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1573).

Editorial Notes

REFERENCES IN TEXT

Subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990, referred to in text, is subtitle B (§§ 9101–9131) of title IX of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–353, as amended, known as the Aviation Safety and Capacity Expansion Act of 1990. Sections 9102 to 9105, 9107 to 9112(b), 9113 to 9115, 9118, 9121 to 9123, 9124 ''Sec. 613(c)'', 9125, 9127, and 9129 to 9131 of title IX of Pub. L. 101–508 were repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

AMENDMENTS

1996—Pub. L. 104–287, § 5(89), substituted ''section 47127'' for ''sections 47106(d) and 47127''.

Pub. L. 104–287, § 5(88)(D), renumbered section 49102 of this title as this section.

§ 50103. 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 multilateral trade agreements (as defined in section 3501(4) of title 19) 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 section 44511, 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 multilateral trade agreements (as defined in section 3501(4) of title 19) or an international agreement to which the United States is a party; and

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

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1298, § 49103; renumbered § 50103, Pub. L. 104–287, § 5(88)(D), Oct. 11, 1996, 110 Stat. 3398; amended Pub. L. 106–36, title I, § 1002(i), June 25, 1999, 113 Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
49103(a)	49 App.:2226d(e).	Nov. 5, 1990, Pub. L. 101–508, § 9207, 104 Stat. 1388–375.
49103(b)	49 App.:2226d(a).	
49103(c)	49 App.:2226d(b).	
49103(d)	49 App.:2226d(c).	
49103(e)	49 App.:2226d(d).	

In subsection (a), the text of 49 App.:2226d(e)(1) is omitted because the complete name of the Administrator of the Federal Aviation Administration is used the first time the term appears in a section.

In subsection (b), before clause (1), the words ''Subject to subsections (c) and (d) of this section'' are added to alert the reader to the limitations in those subsections. In clause (1), the words ''requires making the contract with the domestic firm'' are substituted for ''so requires'' for clarity. The words ''considering United States international obligations and trade relations'' are substituted for ''In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations'' to eliminate unnecessary words. In clause (4), the words ''when completely assembled'' are omitted as surplus. The words ''produced in the United States'' are substituted for ''domestically produced'' for consistency with clause (3).

In subsection (c), the words ''(1) such applicability would not be in the public interest'' are omitted as redundant to subsection (b)(1) of the revised section.

In subsection (e)(1), the words ''foreign firms'' are substituted for ''foreign entities'' for consistency in the revised section.

Subsection (e)(3) is substituted for ''the number of contracts covered under this subtitle (including the amendments made by this subtitle) and awarded based upon the parameters of this section'' to eliminate unnecessary words.

Editorial Notes

AMENDMENTS

1999—Subsecs. (c)(2), (e)(2). Pub. L. 106–36 substituted ''multilateral trade agreements (as defined in section 3501(4) of title 19)'' for ''General Agreement on Tariffs and Trade''.

1996—Pub. L. 104–287 renumbered section 49103 of this title as this section.

§ 50104. 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 section 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.