

and development activities in the United States.

(2) The term “foreign firm” means a business entity other than a United States firm.

(Added Pub. L. 100-456, div. A, title VIII, § 825(b), Sept. 29, 1988, 102 Stat. 2020, § 2505; renumbered § 2532, Pub. L. 102-484, div. D, title XLII, § 4202(a), Oct. 28, 1992, 106 Stat. 2659; renumbered § 4852, Pub. L. 116-283, div. A, title XVIII, § 1870(b), Jan. 1, 2021, 134 Stat. 4284.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2532 of this title as this section.

1992—Pub. L. 102-484 renumbered section 2505 of this title as section 2532.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

CONTRACTUAL OFFSET ARRANGEMENTS; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 100-456, div. A, title VIII, § 825(a), Sept. 29, 1988, 102 Stat. 2019, provided that: “Congress makes the following findings:

“(1) Many contracts entered into by United States firms for the supply of weapon systems or defense-related items to foreign countries and foreign firms are subject to contractual arrangements under which United States firms must agree—

“(A) to have a specified percentage of work under, or monetary amount of, the contract performed by one or more foreign firms;

“(B) to purchase a specified amount or quantity of unrelated goods or services from domestic sources of such foreign countries; or

“(C) to invest a specified amount in domestic businesses of such foreign countries.

Such contractual arrangements, known as ‘offsets’, are a component of international trade and could have an impact on United States defense industry opportunities in domestic and foreign markets.

“(2) Some United States contractors and subcontractors may be adversely affected by such contractual arrangements.

“(3) Many contracts which provide for or are subject to offset arrangements require, in connection with such arrangements, the transfer of United States technology to foreign firms.

“(4) The use of such transferred technology by foreign firms in conjunction with foreign trade practices permitted under the trade policies of the countries of such firms can give foreign firms a competitive advantage against United States firms in world markets for products using such technology.

“(5) A purchase of defense equipment pursuant to an offset arrangement may increase the cost of the defense equipment to the purchasing country and may reduce the amount of defense equipment that a country may purchase.

“(6) The exporting of defense equipment produced in the United States is important to maintain the defense industrial base of the United States, lower the unit cost of such equipment to the Department of Defense, and encourage the standardized utilization of United States equipment by the allies of the United States.”

NEGOTIATIONS WITH COUNTRIES REQUIRING OFFSET ARRANGEMENTS

Pub. L. 100-456, div. A, title VIII, § 825(c), Sept. 29, 1988, 102 Stat. 2021, as amended by Pub. L. 101-189, div.

A, title VIII, § 816, Nov. 29, 1989, 103 Stat. 1501, provided that:

“(1) The President shall enter into negotiations with foreign countries that have a policy of requiring an offset arrangement in connection with the purchase of defense equipment or supplies from the United States. The negotiations should be conducted with a view to achieving an agreement with the countries concerned that would limit the adverse effects that such arrangements have on the defense industrial base of each such country. Every effort shall be made to achieve such agreements within two years after September 29, 1988.

“(2) In the negotiation or renegotiation of any memorandum of understanding between the United States and one or more foreign countries relating to the reciprocal procurement of defense equipment and supplies or research and development, the President shall make every effort to achieve an agreement with the country or countries concerned that would limit the adverse effects that offset arrangements have on the defense industrial base of the United States.”

[For delegation of functions of President under section 825(c) of Pub. L. 100-456 to Secretary of Defense and United States Trade Representative, see section 5-201 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

SUBCHAPTER II—LIMITATIONS ON PROCUREMENT OF CERTAIN ITEMS FROM FOREIGN SOURCES

Sec.	
4861.	Determinations of public interest under chapter 83 of title 41.
4862.	Requirement to buy certain articles from American sources; exceptions.
4863.	Requirement to buy strategic materials critical to national security from American sources; exceptions.
4864.	Miscellaneous limitations on the procurement of goods other than United States goods.

§ 4861. Determinations of public interest under chapter 83 of title 41

(a) In determining under section 8302 of title 41 whether application of chapter 83 of such title is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or
 (B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term “goods which are other than American goods” means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100-370, §3(a)(1), July 19, 1988, 102 Stat. 855, §2501; renumbered §2506, Pub. L. 100-456, div. A, title VIII, §821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered §2533, Pub. L. 102-484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659; amended Pub. L. 103-337, div. A, title VIII, §812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; Pub. L. 104-106, div. D, title XLIII, §4321(b)(20), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105-85, div. A, title X, §1073(a)(54), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 111-350, §5(b)(37), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 113-291, div. A, title X, §1071(a)(9), Dec. 19, 2014, 128 Stat. 3505; renumbered §4861, Pub. L. 116-283, div. A, title XVIII, §1870(c)(2), Jan. 1, 2021, 134 Stat. 4285.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 93-365, title VII, §707, Aug. 5, 1974, 88 Stat. 406.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2533 of this title as this section.

2014—Subsec. (a). Pub. L. 113-291 substituted “chapter 83 of such title” for “such Act” in introductory provisions.

2011—Pub. L. 111-350, §5(b)(37)(A), substituted “chapter 83 of title 41” for “the Buy American Act” in section catchline.

Subsec. (a). Pub. L. 111-350, §5(b)(37)(B), substituted “section 8302 of title 41” for “section 2 of the Buy American Act (41 U.S.C. 10a)” in introductory provisions.

1997—Subsec. (a). Pub. L. 105-85 substituted “(41 U.S.C. 10a)” for “(41 U.S.C. 10a)”.

1996—Subsec. (a). Pub. L. 104-106 substituted “the Buy American Act (41 U.S.C. 10a)” whether application of such Act” for “title III of the Act of March 3, 1993 (41 U.S.C. 10a), popularly known as the ‘Buy American Act’, whether application of title III of such Act”.

1994—Pub. L. 103-337, §812(b)(1), substituted “Determinations of public interest under the Buy American Act” for “Limitation on use of funds: procurement of goods which are other than American goods” as section catchline.

Subsec. (a). Pub. L. 103-337, §812(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “Funds appropriated to the Department of Defense may not be obligated under a contract for pro-

curement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

“(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

“(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

“(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

“(4) The United States balance of payments.

“(5) The cost of shipping goods which are other than American goods.

“(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.”

Subsecs. (b), (c). Pub. L. 103-337, §812(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the ‘Buy American Act’.”

1992—Pub. L. 102-484 renumbered section 2506 of this title as section 2533.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2220 of this title.

§ 4862. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents (and the structural components thereof), tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.