

§ 2512. Authority to encourage reciprocal competitive procurement practices

(a) Authority to bar procurement from non-designated countries

(1) In general

Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) Exception

Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) Deferrals and waivers

Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 1872(a) of this title, such prohi-

bition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 2155 of this title and with the appropriate committees of the Congress.

(c) Report on impact of restrictions

(1) Impact on the economy

On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity

The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of chapter 83 of title 41. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 2514(a) and (b) of this title, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation

In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 2155 of this title.

(d) Proposed action

(1) Presidential report

On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity

with major industrialized countries in the area of Government procurement.

(2) Procedure

(A) Presidential determination

If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) Congressional consideration

The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

(Pub. L. 96-39, title III, §302, July 26, 1979, 93 Stat. 236; Pub. L. 103-182, title III, §381(b), Dec. 8, 1993, 107 Stat. 2129; Pub. L. 103-465, title III, §343(a), (b), Dec. 8, 1994, 108 Stat. 4954, 4955.)

Editorial Notes

CODIFICATION

In subsec. (c)(2)(B), “chapter 83 of title 41” substituted for “title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-465, §343(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

“(1) shall prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and (B) which are products covered under the Agreement for procurement by the United States; and

“(2) may take such other actions within his authority as he deems necessary.”

Subsec. (b). Pub. L. 103-465, §343(b)(2), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 103-465, §343(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1) of this section, of products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, except that no such delay shall be granted with respect to the procurement of products of any major industrial country;”.

1993—Subsec. (a)(1). Pub. L. 103-182 substituted “are products covered under the Agreement for procurement

by the United States” for “would otherwise be eligible products”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title III, §344, Dec. 8, 1994, 108 Stat. 4955, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle E (§§341-344 of title III of Pub. L. 103-465, amending this section and sections 2513 to 2515, 2517, and 2518 of this title, repealing section 2516 of this title, and amending provisions set out as a note under section 903 of Title 7, Agriculture] take effect on the date on which the Agreement on Government Procurement referred to in section 101(d)(17) [19 U.S.C. 3511(d)(17)] enters into force with respect to the United States [Jan. 1, 1995].

“(b) SECTION 342(g).—The amendments made by section 342(g) [amending provisions set out as a note under section 903 of Title 7] take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 381(e) of Pub. L. 103-182, formerly set out as a note under section 2511 of this title.

Executive Documents

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, with authority delegated to Secretary of Defense to waive the prohibitions contained in subsec. (b)(3), see section 1-201 of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

§ 2513. Waiver of discriminatory purchasing requirements with respect to purchases of civil aircraft

The President may waive the application of the provisions of chapter 83 of title 41 in the case of any procurement of civil aircraft and re-