
III. GOVERNMENT PROCUREMENT AND DOMESTIC PREFERENCE LEGISLATION

Although a significant amount of government procurement is covered by the GATT and the NAFTA, many barriers remain. The Buy American Act still affects some federal contracts, and related legislation creates barriers that flow through federal funding to state and local contracts. The Buy American Act indirectly discourages U.S. distributors from selling Canadian goods, since it might require separate inventories of goods eligible for public contracts and those ineligible for this use. Small business set-asides further prohibit Canadian bids. In addition, state and local governments apply a wide variety of discriminatory provisions in support of local business.

Buy American Act

Canadian exports are impaired by application of the Buy American Act (BAA) in U.S. federal contracts for goods which involve entities not covered by the NAFTA, and in construction services contracts valued at less than the NAFTA threshold (U.S.\$6.5 million). Materials purchased under construction services contracts, valued at less than U.S.\$6.5 million, for the construction or repair of any public building or public work in the United States must be of U.S. origin or manufacture, and the cost of American-origin components must exceed 50% of the cost of all components.

There are a number of specific "Buy American" restrictions in U.S. legislation, including:

- ▶ the "Berry Amendment", which requires the Department of Defense to buy food, clothing, fabrics and specialty metals that are products of the United States; and
- ▶ the "Byrnes-Tollefson Amendment", which prohibits foreign construction of U.S. ships or foreign supply of major ship components.

In addition, Canadian exports are impaired by protectionist provisions in state and local government contracts. Procurement by these levels of government is not covered by the GATT Procurement Code or the NAFTA.

Related Legislation

U.S. state and local governments, and private sector entities, often receive federal project funding on condition that procurement be restricted to U.S. suppliers. As a result, the use of Canadian products in such projects, which are often in sectors of significant interest to Canadian exporters such as transportation and communications, is frequently difficult or impossible.

Restrictions attached to federal funding of transportation projects (including urban mass transit, rail and highways) generally require the use of U.S. materials and equipment unless the granting agency determines that an exception should be made.

For example, in order for U.S. states to receive federal funds from the Urban Mass Transit Administration, contracts for mass transit equipment must specify a price preference of 25% for tenders supplying U.S. made or assembled equipment containing at least 60% local materials. Federal Highway Administration grants require that manufactured products made of iron or steel be made in the United States. Furthermore, all federal procurement of steel products, rolling stock and power-train equipment for rail passenger service is required to be from U.S. suppliers.