
III. GOVERNMENT PROCUREMENT AND DOMESTIC PREFERENCE LEGISLATION

Although a significant amount of government procurement is covered by the WTO Agreement on Government Procurement and the NAFTA, many barriers to Canadian exports 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 also 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 such use. Small business set-asides are a further limitation on bids from Canada. In addition, state and local governments often apply a variety of discriminatory provisions in support of local business.

Buy American

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 (US\$6.5 million). Materials purchased under construction services contracts, valued at less than US\$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.

Other examples of U.S. federal Buy American requirements include:

- The Foreign Relations Act requires 55% American content on all Voice of America modernization contracts.
- The Foreign Assistance Act prohibits use of U.S. funds (including foreign military sales) for procurement from foreign sources unless the President determines that such procurement would not adversely affect the U.S. economy or industrial base.
- The Emergency Food Assistance Act, and other legislation related to government support of human feeding programs, requires that recipient agencies purchase to the extent possible U.S.-produced food products.