

IV. GOVERNMENT PROCUREMENT AND DOMESTIC PREFERENCE LAWS

Despite the GATT and the NAFTA, barriers in government procurement remain. The Buy American Act still affects federal contracts directly, and related legislation creates barriers that flow through federal funding to federal, 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.

Buy American Act

Canadian firms are affected by the Buy American Act (BAA) at the federal level in either construction contracts valued at less than \$6.5 million or in contracts for goods which involve entities not covered by the NAFTA. A grant of federal funds to state and local governments, particularly for mass transit, airport and highway projects, also requires the application of BAA provisions. Canadian companies are also affected by BAA provisions in state and local government contracts, since these levels of government are not covered by the NAFTA.

The United States may claim that national security concerns prohibit Canadian firms from bidding on certain defence contracts. Annual defence funding also contains various Buy American provisions, 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 any foreign construction of U.S. ships or foreign supply of major ship components.

Materials used in 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 per cent of the cost of all of its components.

Related Legislation

Large federal, state and local government projects receive federal funds authorized by laws that require significant U.S. content. These billions of dollars in federal funds extend the reach of the Buy American Act to state, municipal and private sector