

by DOD require access to information in one or more of these areas and Canadian industry is usually unable to participate because of inability to obtain all the relevant specifications.

5.13 Balance of Payments (Gold Flow) Restrictions

Under an emergency program going back to 1963, the U.S. Military Departments will not buy goods from non-U.S. sources when destinations are overseas, unless the lowest U.S. bid is at least 50 per cent higher than the low foreign bid.

It should be noted that this restriction applies only to United States military procurements clearly destined for use outside of the United States or Canada. The great majority of United States procurement goes into the military inventory, with the contract consignment point within the United States, and these procurements are not affected by the balance of payments restrictions.

Canadian manufacturers can participate as sub-contractors to United States prime contractors carrying out contracts for supplies for off-shore use. Canadian components can be incorporated into United States end products to the extent of not more than 50 per cent of the end product cost. Duty-free entry is available.

6.0 Legislation Affecting Defence Trade

6.1 General

Order-in-Council PC 1970-1913, which was promulgated in November 1970, has simplified matters for Canadian manufacturers requiring imported materials for U.S. defence work. That Order-in-Council is implemented by Department of National Revenue (DNR) memorandum D53-11, which is reproduced in the companion to this book, the "Defence Export Shippers' Guide".

The United States laws which affect Canadian defence shipments are the Buy American Act and Customs Tariff. The following sections, together with the "Defence Export Shippers' Guide" which is being published separately, provide adequate guidance to Canadian defence exporters for all but the most unusual situations. The U.S. Division of Defence Programs Bureau will provide advice if and when required.

6.2 Buy American Act

6.2.1 Supply and Service Contracts

For a number of years Canadian suppliers of defence materiel enjoyed specific exemption from the Buy American Act provisions under a complicated process involving the official "listing" of exempt items. U.S. Department of Defense involvement with various NATO country governments has resulted in the dropping of this process and in the designation of a number of countries, including Canada as "Participating Countries," to which the provisions of the Buy American Act do not apply in respect to defence material.

Canadian materials and products are considered to be U.S. goods for the purposes of the Buy American Act by virtue of designation of Canada as a participating country DAR 6-001.1(f) and 6-001.5(c). There are certain exceptions to this consideration if a Canadian supplier is in competition with a supplier from a "non-participating" country (DAR 6-104.4). Canadian suppliers should be familiar with the methods of evaluating offers as contained in this DAR paragraph.

Basically the Buy American Act exemption applies at both the prime and subcontract level of supply.

6.2.1.1 Prime Contracting

Since Canada is designated as a "Participating Country" (DAR 6-001.5(c) and 6-001.1(f)), Canadian materials and products are considered to be U.S. goods for the purposes of the Buy American Act.

6.2.1.2 Subcontracting

When a U.S. defence contractor is incorporating Canadian supplies, whether the supplies are listed or not, they are considered to be U.S. material for the purposes of the Buy American Act. Thus, the U.S. prime or subcontractor at any level can buy the components of his product from a Canadian