

C-#75-76

091947

# REPORT TO THE CONGRESS



BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

---

## Governmental Buy-National Practices Of The United States And Other Countries — An Assessment

The United States, Great Britain, France, Germany, and Japan all follow buy-national practices which limit most governmental procurement to available domestic sources. This limits foreign competition, thereby increasing costs.

Much government procurement is not subject to foreign competition, not because of the buy-national practices, but because domestic suppliers have tremendous inherent practical advantages--language, proximity, and familiarity.

Although, the United States should work toward freer trade, GAO does not believe it is desirable to unilaterally make major concessions to eliminate U.S. buy-national practices.

SEPT. 30, 1976

ID-76-67

091947



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-162222

To the President of the Senate and the  
Speaker of the House of Representatives

This report describes buy-national practices of the United States and some of its major trading partners. We trust that the information discussed in this report will assist the Congress and the executive agencies in considering legislative and administrative matters relating to buy-national practices.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report have been sent to the Secretaries of State, Defense, and Commerce; the Administrator, General Services Administration; the Special Representative for Trade Negotiations; and heads of other Federal agencies.

A handwritten signature in black ink, appearing to read "James B. Stacks".

Comptroller General  
of the United States

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Scope of review	2
2	COMPARISON OF THE BUY-NATIONAL PRACTICES AND PROSPECTS FOR REDUCING NONTARIFF BARRIERS	4
	Recommendation to the Congress	10
3	FEDERAL PROCUREMENT DIRECTED MOSTLY TO DOMESTIC SOURCES	11
	DOD procurement restrictions for national security reasons	13
	DOD legislative restrictions-- food, clothing, specialty metals, and shipbuilding	14
	DOD foreign-source purchases	15
	Other agency legislative restrictions	16
	Practical constraints	17
	Procurement subject to competition from U.S. and foreign sources	27
	Impact of buy-national practices	27
4	VIEWS OF U.S. INDUSTRY	30
	Textile representatives	30
	Steel and specialty metal representa- tives	32
	Heavy electrical equipment represent- ative	35
5	BUY-NATIONAL PRACTICES OF TRADING PARTNERS	38
	Great Britain	40
	France	43
	Germany	46
	Japan	49
6	APPLICATION OF THE BUY AMERICAN ACT AND THE SPECIALTY METALS PROVISION	53
	Buy American Act	53
	Specialty metals provision	63
	Recommendation to the Congress	66

APPENDIX

Page

I	Listing of selected legislative-based restrictions having the greatest impact on fiscal year 1974 U.S. governmental procurements	67
II	Geographic exemptions of the Buy American Act	70
III	Analysis of procurement data obtained from six U.S. Government agencies	72
IV	Letter dated June 23, 1976, from John J. Bennett, Principal Deputy Assistant Secretary of Defense, Department of Defense	73
V	Letter dated June 25, 1976, from Hugh E. Witt, Administrator, Office of Management and Budget	74
VI	Letter dated June 28, 1976, from Daniel L. Williamson, Deputy Assistant Secretary for Budget and Finance, Department of State.	76
VII	Letter dated July 12, 1976, from Joseph E. Kasputys, Assistant Secretary for Administration, Department of Commerce	80
VIII	Letter dated July 7, 1976, from Frederick B. Dent, The Special Representative for Trade Negotiations	84
IX	Letter dated June 30, 1976, from Lynn Seeber, General Manager, Tennessee Valley Authority	87
X	Letter Dated July 8, 1976, from Jack Eckerd, Administrator, General Services Administration	89
XI	Letter dated July 9, 1976, from Richard R. Hite, Deputy Assistant Secretary of the Interior	90

APPENDIX

XII	Letter dated August 4, 1976, from William S. Heffelfinger, Assistant Secretary for Administration, Department of Transportation	91
XIII	Principal officials responsible for administration of activities discussed in this report	92

ABBREVIATIONS

ASPR	Armed Services Procurement Regulations
DOD	Department of Defense
ERDA	Energy Research and Development Administration
FPR	Federal Procurement Regulations
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
GSA	General Services Administration
NASA	National Aeronautics and Space Administration
NATO	North Atlantic Treaty Organization
OECD	Organization for Economic Cooperation and Development
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
TVA	Tennessee Valley Authority

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

GOVERNMENT BUY-NATIONAL PRACTICES  
OF THE UNITED STATES AND OTHER  
COUNTRIES--AN ASSESSMENT  
Multiagency

D I G E S T

The United States, Great Britain, France, Germany, and Japan all follow buy-national practices which limit most governmental procurement to available domestic sources. This limits foreign competition, thereby increasing costs.

Much government procurement is not subject to foreign competition, not because of the buy-national practices, but because domestic suppliers have tremendous inherent practical advantages--language, proximity, and familiarity. Existing superior U.S. technology in weapon systems is also an important factor in limiting competition.

Analysis of fiscal year 1974 procurement data from six U.S. Government agencies showed that, because of national security, specific legislation, and practical constraints, only 3 percent (\$1.3 billion) of the \$44.6 billion of procurement GAO reviewed was open to competition from both domestic and foreign sources. For the other 97 percent of the procurement, the sources of competition were either exclusively domestic or foreign.

It is not possible to accurately estimate the budgetary impact of the Buy American Act and other buy-national barriers because of such unknown factors as what contractors would bid and what prices would be offered.

Also, product modifications, price fluctuations, scarcity periods, changing international economic and monetary conditions, and other variables which are difficult to predict and evaluate make estimating the budgetary impact speculative.

ear Sheet. Upon removal, the report  
over: date should be noted hereon.

Among the industries in the private sector most affected by foreign competition and protected by the Government's various buy-national practices are the textile, steel, specialty metals, and heavy electrical equipment industries.

Great Britain, France, Germany, and Japan generally maintain closed bidding systems and their governmental procurement practices show a pervasive bias against foreign sources. None of the foreign government officials or U.S. business representatives GAO interviewed could identify any major imports for these countries where items were available from domestic sources. Subtle administrative guidance and practices, rather than laws and regulations, are used to effectively preclude most foreign competition.

Although the United States should work toward freer trade, GAO believes it is not desirable to unilaterally make major concessions to eliminate U.S. buy-national practices. Arrangements with U.S. trading partners to work toward freer trade, with due regard for national interests and safety, should:

- Be contingent on reciprocal actions by U.S. trading partners that will clearly result in opportunities for U.S. industry and labor to benefit from increased exports.
- Encourage a competitive domestic base by increasing competition from foreign sources on a price and quality basis.
- Provide for high visibility of procurement practices and surveillance and settlement mechanisms for implementing agreements.

Existing pervasive and extensive buy-national practices make it very difficult to obtain a meaningful international agreement to open governmental procurement to international competition.

## SPECIALTY METALS PROVISION

It is not clear whether the 1972 addition of the specialty metals provision to the Defense Appropriations Act has increased the Department of Defense procurement of specialty metals from domestic sources.

Defense uses about 4 percent of the industry's output. It asserts that most of the high-technology specialty metals used in weapons systems before 1972 were procured from domestic sources, and this practice likely would have continued without enactment of the provision.

Defense believes that the provision has increased the problems associated with coproduction and offset agreements, such as those arranged for the sale of the F-16 aircraft. These arrangements are associated with U.S. efforts to standardize weapons systems with NATO countries and to further sales of U.S.-designed systems to these countries. (See ch. 6.)

## Buy American Act

Administering the Buy American Act provisions is not difficult and involves only incidental costs. The provisions are administered through a standard contractual clause which requires that a supplier certify that only domestic end products be used. Where end products contain both domestic and foreign components, the supplier certifies that the cost of the domestic components of the end product exceeds 50 percent of the total component cost. Monitoring features include inspecting commodities and resolving protests alleging unauthorized use of nondomestic items.

Although civilian agencies add a 6- or 12-percent differential to the lowest foreign bid under the Buy American Act, Defense adds 50 percent. In 1964 Defense justified the 50-percent differential saying it



would help improve the then unfavorable U.S. balance-of-payments position. GAO believes that due to the negligible impact of the Buy American Act on the balance-of-payments and the improvement in the U.S. balance-of-trade position, in part attributable to the devaluation of the dollar and the relatively lower U.S. rate of inflation, a 50-percent differential solely for balance of payments is not justified.

GAO is making several recommendations to the Director, Office of Management and Budget, and the Administrator, Office of Federal Procurement Policy, for mitigating some of the outstanding problems in administering the Buy American Act. (See p. 62.) These offices agreed with these recommendations. The comments of these offices and of the seven other agencies which reviewed the report are contained in appendixes IV through XII.

#### RECOMMENDATIONS TO THE CONGRESS

Congressional committees should review with Defense (1) whether the specialty metals provision in the Defense Appropriations Act has had any significant impact in increasing Government procurement of domestic specialty metals and (2) the consequence of this provision on efforts to arrange NATO standardization agreements, particularly as it affects sales of U.S.-designed military weapons systems.

The Congress, in any deliberations on a proposed agreement on an international governmental procurement code, in addition to considering its potential benefits and impact on U.S. industry and labor, should assure itself that the following elements are present:

--A settlement mechanism for dealing with allegations of buy-national bias.

- High visibility of procurement practices by all participating nations.
- A surveillance mechanism to monitor compliance. (See ch. 2.)

## CHAPTER 1

### INTRODUCTION

Buy-national practices of the United States, Great Britain, France, West Germany, and Japan restrict most government procurement to available domestic sources. In this report we clarify the reasons for such preferences, the manner in which they are applied, and the prospects for reducing such nontariff barriers.

The effects of buy-national practices are similar to those of tariffs in the private sector in that they increase the cost of goods purchased. If a foreign supplier must underbid a U.S. rival by the 12-percent margin established by the Buy American Act, for example, the same pattern of trade will emerge as with a 12-percent tariff on foreign goods offered in the private sector.

Buy-national practices are clear-cut benefits to the domestic firms and their workers which are protected from foreign competition. The U.S. taxpayer, however, must absorb the increased costs attributable to the inability of the Government to purchase less expensive foreign products.

The net effect of these protective barriers is difficult to determine. Depending on the market in question, the net effect could be beneficial or harmful, without comparing one group's loss to another's gain.

Specifically, it is impossible to measure precisely how much trade is diverted by either a tariff or a buy-national barrier. Regardless of the actual magnitude of the effects, and whether the buy-national laws are, on the whole, favorable to the U.S. economy, it is possible to improve the manner in which the buy-national goals are pursued.

The application and implementation of these buy-national practices such as the Buy American Act and emergency or sole-source purchases are defined and published in two procurement documents: the Department of Defense (DOD) Armed Services Procurement Regulation (ASPR) and the General Services Administration (GSA) Federal Procurement Regulations (FPR). Social and economic policies which are to be achieved through the procurement process, e.g., appropriation acts and national security considerations, are formulated by legislation (see app. I) and policies of the cognizant agencies.

The Energy Research and Development Administration, (ERDA) has issued its own version of FPR as chapter 4,

title 41 of the Code of Federal Regulations. The National Aeronautics and Space Administration (NASA) Procurement Regulations closely parallel the ASPR. Tennessee Valley Authority's (TVA's) policies, regarding the Buy American Act, are similar to DOD's and GSA's procurement regulations.

The Office of Federal Procurement Policy is the Office responsible for providing direction to these policies, regulations, and procedures directly affecting the procurement of executive agencies.

The Department of State advises in the formulation and execution of foreign policy and is concerned with all matters relating to international trade. The Department of Commerce is frequently involved in trade complaints lodged by American citizens and companies against foreign procurement practices. Both Departments, along with DOD, Departments of Treasury and Labor, Office of Management and Budget (OMB), and GSA, participate in the interagency task force chaired by the Office of the Special Trade Representative to formulate U.S. policies that guide the ongoing international trade negotiations.

#### SCOPE OF REVIEW

We reviewed governmental buy-national practices of the United States, Great Britain, France, Germany, and Japan.

We obtained data on U.S. Government procurement either from management information systems of executive agencies or from data compiled by agency procurement officials. We analyzed and classified this data and reviewed those procurement actions which indicated potential for competition from both domestic and foreign sources. Selection of agencies for our review was based on insuring that we (1) accounted for most of total Government procurement, (2) included Government procurement most subject to foreign competition, and (3) included agencies whose management information systems would best help our analysis.

Views were also obtained from U.S. industry officials at both U.S. and overseas locations.

We did not review buy-national barriers imposed by States and local governments, including those applicable to funds obtained through Federal grants.

To determine the relative restrictions of Japan, France, West Germany, and Great Britain on government procurement and to identify the types and values of products procured

by these countries, we initially attempted to obtain from each country or from the Organization for Economic Cooperation and Development (OECD) a breakdown of each country's domestic and foreign Government procurement. Government and OECD representatives told us that this data was not available.

Instead we obtained information by interviewing representatives of U.S. corporations overseas, foreign government procurement officials, and U.S. Embassy personnel. From May to August 1975, we held 14 interviews with representatives of the various ministries and nationalized industries of foreign governments and 36 interviews with officials representing U.S. corporations in the respective countries.

We incorporated information obtained from earlier studies, from agency officials in Washington, D.C., and from U.S. Embassies abroad. Nine governmental agencies (see apps. IV through XII) commented on this report.

A list of principal officials concerned with matters discussed in this report is included in appendix XIII.

## CHAPTER 2

### COMPARISON OF BUY-NATIONAL PRACTICES

#### AND PROSPECTS FOR REDUCING NONTARIFF BARRIERS

Over the years, much criticism has been directed at the United States for its restrictive Government purchasing policies--the Buy American Act and other buy-national legislation. These restrictions, which are described in chapter 3, have been effective. It is inaccurate to conclude, however, that the United States is more restrictive than Great Britain, France, Germany, and Japan because of present buy-national legislation.

Chapter 5 shows that foreign governments and nationalized industries also exclude most foreign competition when similar items are available domestically. Rather than visible laws and regulations, however, subtle administrative guidance and practices effectively preclude most foreign competition.

United States policies generally limit defense procurement to U.S. sources because of national security considerations; appropriation act limitations on textiles, subsistence items, specialty metals, and shipbuilding; and a 50-percent price differential favoring U.S. suppliers. Foreign companies have an opportunity to underbid U.S. firms for nondefense procurement where the 6- or 12-percent price differentials favoring American suppliers permit some foreign competition. According to a U.S. business representative, the lack of such measurable guidelines overseas limits his firm's ability to appraise its chances of getting foreign government business.

Analysis of fiscal year 1974 procurement data from six Government agencies comprising 90 percent of total government procurement showed that because of national security considerations, other specific legislation and practical constraints, only 3 percent of the procurement was subject to competition from both domestic and foreign sources. For the other 97 percent of the procurement, the sources of competition were either exclusively domestic or foreign. Nevertheless, major purchases of foreign equipment were made. This is evident in the foreign purchases of heavy electrical equipment by the Tennessee Valley Authority and the Department of the Interior. In fiscal year 1974 approximately 20 percent, or \$194 million, of TVA's procurement budget was spent on foreign items. Of that amount, \$184.4 million was for turbine generators purchased under an invitation to bid where the domestic manufacturers refused to accept the terms

and conditions contained in the invitation and the only responsive bidder was the foreign manufacturer. This contrasts with the highly restrictive procurement policies of the Central Electricity Generating Board in Great Britain and l'Electricité de France, a situation which has led to protests by U.S. heavy electrical equipment manufacturers.

Many business and government officials we interviewed felt that efforts to make government procurement systems compatible and open to international competition face the same pressures of political, military, and economic considerations and the natural bias for dealing with familiar domestic suppliers (described in chapter 5) that make a meaningful international agreement very difficult.

Overseas, some hurdles to overcome include the traditionally close government and business relationships in the European countries and Japan, expected pressures from business and labor, lack of reciprocal access to national government procurement markets, nationalistic tendencies supporting strategic and other prestige industries, and lack of uniformity in standards and technical specifications.

Altering the close working relationships between business and government in Europe and Japan would be difficult. These relationships have developed over a number of years, and several foreign procurement officials expressed a natural bias in terms of the ease of dealing with familiar domestic suppliers. Purchasing from a nearby source better insures immediate servicing, maintenance, and spare parts.

Domestic industry and labor demands for preferential treatment in government procurement are strong but become even more pronounced during recessionary periods. Interviews disclosed that foreign procurement officials are heavily influenced by such pressure. Aside from government procurement, present economic conditions in one European country prompted a government official in charge of trade matters to publicly urge its citizens to purchase domestically made automobiles. Under these economic circumstances, the prevailing policy of favoring domestic industry in government procurement will be hard to change.

Also working against a comprehensive agreement on government procurement is a nationalistic desire to maintain and develop domestic capabilities for high technology in such fields as computers, electronics, aerospace, communications, and transportation. Other countries feel they are

at a competitive disadvantage in high-technology products because of the size of the U.S. market. This sentiment is best expressed by a statement made by a representative of a European country.

"To fail to produce an indigenous industry would expose the country to possibilities that industrial, commercial, strategic or political decisions made in America would heavily influence our ability to manufacture, to trade, to govern or to defend \* \* \*."

He went on to point out that it is unrealistic to expect a domestic manufacturer to engage in competition with U.S. manufacturers that compete in an economy which is eight times larger than theirs.

The nationalized industries in Great Britain, France, Germany, and Japan procure high-technology equipment relating to telecommunications, electric power, transportation, etc. Currently, these countries appear to be excluding procurement by nationalized industries from negotiations for an agreement on opening government procurement to international competition. Their rationale for excluding these purchases is that nationalized industries have autonomous purchasing authority and are not part of the central government. We questioned this rationale because discussions with procurement officials showed that the governments exert substantial influence over the purchasing policies of the nationalized industries.

Closely related to a nationalistic desire to maintain high-technology industries are the nations' interests in maintaining industries important to their national security. Although the respective industries have not been precisely defined, negotiations for an international agreement for government procurement are not expected to cover weapon systems or items of strictly military hardware. For example, various U.S. industries have attempted to be included under the umbrella of national security to protect themselves from foreign competition (heavy electrical equipment, steel, textiles, etc.). Commodities currently identified by DOD as being restricted for national security reasons include such items as weapons, ammunition and explosives, aircraft and components, engines and accessories, nuclear reactors, communications equipment and instruments, and laboratory equipment.

All the above factors limit foreign competition. Also much Government procurement is not subject to foreign competition because of practical constraints. For example, sole-source and emergency purchases, the need for specific repair



parts, maintenance and repair of equipment, transportation services, purchases of perishable subsistence supplies; and the purchase of utility services are some of the practical constraints which may preclude foreign competition. Some of these restraints may become less severe in the future if various countries' standards and technical specifications can be harmonized.

Attempts at negotiating a code on government procurement among Organization for Economic Cooperation and Development countries has thus far had negligible results. The Trade Committee of the OECD has been working periodically since 1966 to negotiate an agreement to open government procurement to all suppliers without regard to the origin of the goods. It is expected that, at some time in the future, the results of these negotiations will be passed on to the Multilateral Trade Negotiations, which includes all the members of the General Agreement on Tariffs and Trade (GATT). Concerned agency officials commenting on our draft report said the countries participating in Multilateral Trade Negotiations have agreed to set up a nontariff barrier subgroup in Geneva which would focus on the negotiation of an international code on government procurement.

If the degree of success reached by the European Community in its negotiations on the subject of public procurement is any indication of the potential results from OECD negotiations, an effective agreement is doubtful. The European Community agreement on public works contracts has been in effect since 1972 but, according to foreign procurement officials, procurement patterns of the countries involved have changed very little.

A second agreement anticipated among the nations of the European Community is expected to cover supplies and equipment. A high-level task force was commissioned in November 1973 to "review the reasons underlying the low and stagnant level of intra-community public procurement" and to make policy recommendations. After a 6-month fact-finding mission to all members of the European Community, task force members concluded that the major obstacles to increased openness in public procurement were political and not technical in nature. According to their report, the major difficulties, which in our opinion also apply to present OECD efforts, are:

- (1) A deep-rooted feeling, common to politicians, officials, and industry that the taxpayers' money should be used to purchase domestic and not foreign goods.

(2) All governments regard themselves (and are so regarded to varying extents by their electorates) as responsible for their countries' economic well-being, employment, balance of payments, industrial development, etc. Government purchasing is used to fulfill these responsibilities.

(3) The public buyer has responsibility to his government and, in the case of criticism, to the public for his actions. A private buyer can make a private bargain and this is the essence of trade. The public buyer must always be aware that he may have to defend his actions, sometimes against political pressures generated by the rejected bidder.

The report recommended that the emphasis of negotiations not be on sanctions for noncompliance but rather on developing a European public purchasing constitution which would, to a large degree, depend upon the goodwill of all members.

A second recommendation was not to include public utilities, such as telecommunications, electricity, and railways, in any prospective agreement. The report concluded that the relationship between public utilities and national suppliers was so inextricably intertwined that an attempt should not be made to sacrifice this relationship to a more liberal public procurement policy. Present indications are that public utilities will not be included in any European Community agreement on procurement.

We believe that dealing in generalities and depending upon the goodwill of the negotiators fail to address the difficult issue of foregoing national control over government procurement policy, both in the European Community and OECD. Also, dropping public utilities from consideration would eliminate a portion of procurement which could have great potential impact upon the procurement patterns of the countries involved.

To insure that Government procurement decisions are, in fact, based on price, quality, and related considerations, some mechanism will be needed to settle disputes between competing suppliers. This implies that some type of supranational body will have the authority to question national government purchasing decisions and apply sanctions, if necessary. In the view of one U.S. industry official, the question of sanctions depends on whether the instrument will ultimately represent a statement of principles or whether it will, in fact, become an instrument of international contractual obligation. In any case, if such an expert body with a final say in procurement decisions is not established, it will be

difficult to resolve allegations of bias in awards by governments to their own domestic firms.

The effectiveness of the settlement mechanism will, to a large extent, depend upon the degree of visibility of procurement policy and decisions of all the trading partners. This will involve disclosing all pertinent government purchasing decisions which could, in turn, be examined by competing suppliers to determine whether or not to appeal a government award.

Finally, because of the dispersion of purchasing responsibility among different agencies, divisions within the same agency, different cities, regions, etc., the operations of the code must be regularly monitored to guarantee compliance. Unless a major effort is made to effectively audit the implementation of such a code, noncompliance is possible due to the tendency of procurement officials to favor national supply sources.

For the portion of governmental procurement that is or may be subject to foreign competition, we believe it is not desirable for the United States to unilaterally make major concessions to eliminate its buy-national practices. Arrangements with our trading partners to work toward freer trade with due regard for national interests and safety should:

- Be contingent on reciprocal actions by our trading partners that clearly will result in opportunities for U.S. industry and labor to benefit from increased exports.
- Encourage a competitive domestic base by increasing competition from foreign sources on a price and quality basis.
- Provide for high visibility of procurement practices and surveillance of settlement mechanisms for implementing agreements.

The concerned agencies had not identified any positive results to meet these criteria.

We conclude that because of the pervasive and extensive buy-national practices which exist, as well as the practical constraints limiting foreign procurement, it will be very difficult for much progress to be made in the near future to open a large portion of government procurement to international competition on terms that are equitable to our industry and labor interests.

RECOMMENDATION TO THE CONGRESS

The Congress, in any deliberations on a proposed agreement on an international procurement code, in addition to considering its potential benefits and impact on U.S. industry and labor, should assure itself that the following elements are present:

- A settlement mechanism for dealing with allegations of buy-national bias.
- High visibility of procurement practices by all participating nations.
- A surveillance mechanism to monitor compliance.

## CHAPTER 3

### FEDERAL PROCUREMENT DIRECTED MOSTLY

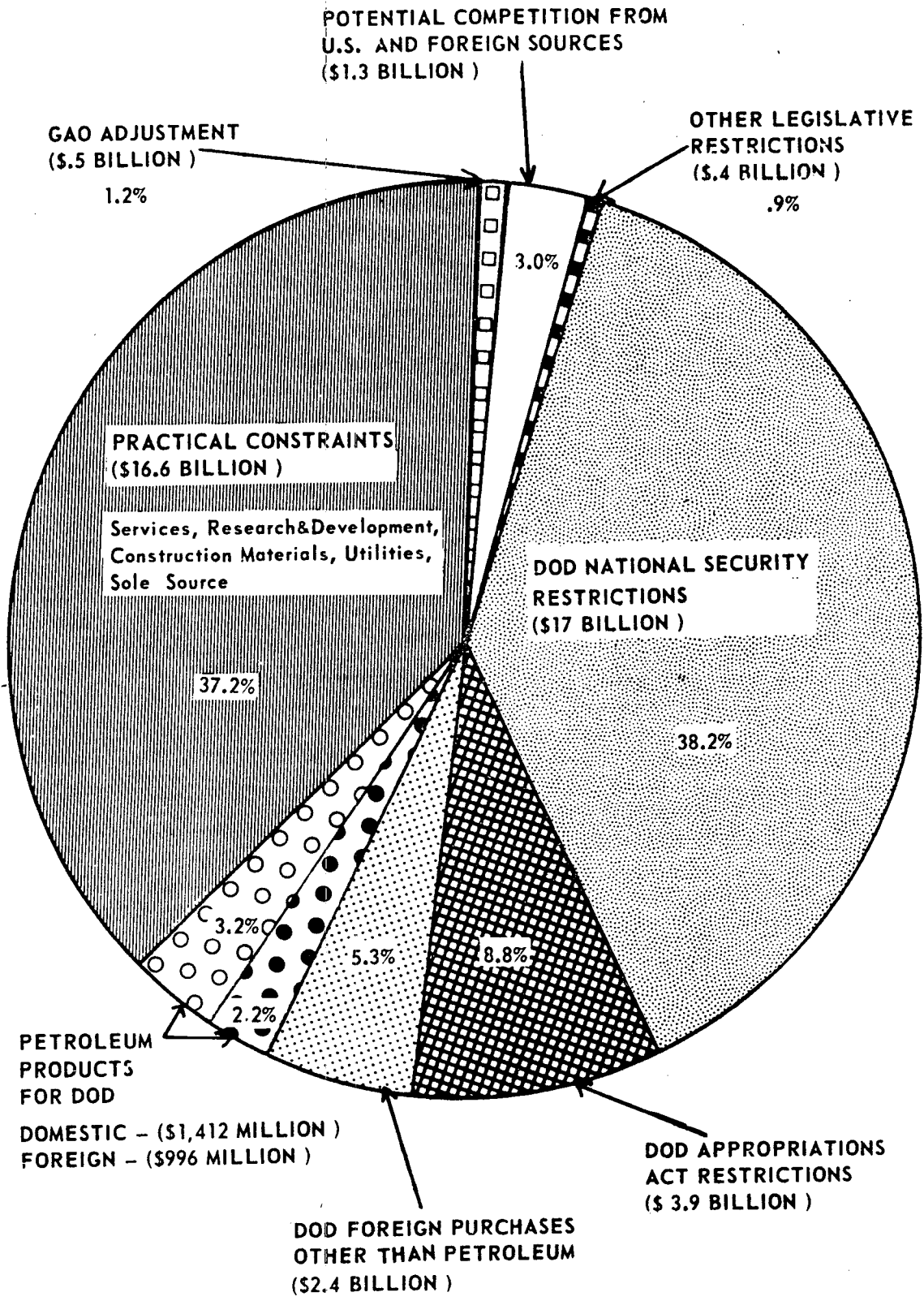
#### TO DOMESTIC SOURCES

Analysis of fiscal year 1974 procurement data from six Government agencies showed that because of national security considerations, other specific legislation, and practical constraints, only 3 percent of procurement was subject to competition from both domestic and foreign sources. (See app. III.) For the other 97 percent of procurement, the sources of competition were either exclusively domestic or foreign.

Procurement by these agencies totaled about \$50 billion in fiscal year 1974, or 90 percent of total Federal purchases of goods and services. About 4.5 billion was excluded from our analysis because individual procurement actions under \$10,000 were not included in Department of Defense and Transportation's computerized management information systems. Other deletions of about \$580 million were attributable to the lack of availability of the data in the agencies' management information systems. Of the \$44.6 billion of goods and services reviewed, only about \$1.3 billion was subject to foreign competition where U.S. sources were available.

The Buy American Act is not the primary barrier to purchasing from foreign sources. Its price differentials are to be implemented only when there is effective price competition for a contract from both domestic and foreign suppliers. (See ch. 6.) Other restrictions, such as national security considerations, other specific legislation, and practical constraints direct most Government purchases to domestic sources and eliminate the potential for effective foreign competition.

The following chart identifies those barriers which most obviously prohibited or restricted the U.S. Government from procuring from foreign sources.



A discussion of the barriers comprising these buy-national practices of the United States and their impact follows.

#### DOD PROCUREMENT RESTRICTIONS FOR NATIONAL SECURITY REASONS

In terms of dollar value, DOD's "Industrial Preparedness Planning" for the production of military items essential in a national emergency has a greater impact than all the specific legislative restrictions in directing purchases of goods and services to U.S. sources. Executive Order 11490 authorized DOD to maintain an adequate mobilization production base in military product industries. DOD Instruction 4005.3 provides guidance for identifying and selecting items essential to national security. To maintain a domestic industrial base for national emergencies, DOD usually purchases these items (military weapons systems and related hardware) from domestic sources. Such purchases amounted to about \$17 billion in fiscal year 1974.

For economic, political, and military reasons, DOD may make selected purchases of foreign military systems. The only major expenditure for a foreign weapon system in recent years was for the British-made Harrier aircraft, which amounted to about \$73 million for fiscal year 1974.

DOD identified commodities procured for national security purposes to include weapons, ammunition, explosives, aircraft and components, engines and accessories, nuclear reactors, communications equipment and instruments, and laboratory equipment.

Research and development projects for similar items would also generally be restricted to domestic sources of supply for national security reasons. These projects include research, exploratory development, and management and support for such items as aircraft, missiles and space systems, ships, tanks, weapons, ammunition, and communications equipment. Research and development procurement that was restricted for national security reasons amounted to about \$4 billion during fiscal year 1974.

Participation by our North Atlantic Treaty Organization (NATO) allies in production of military weapon systems, although encouraged, is limited by the United States' need to maintain an industrial mobilization base and the higher level of U.S. military technology. There is, however, potential in

future years for increased participation by our allies as indicated by the arrangements for the production of the F-16 aircraft, which provides for participation by several NATO allies. This arrangement is in consonance with the increased recognition that rationalization and standardization are essential to maintaining a credible NATO deterrence and defense posture at a realistically acceptable cost. In such arrangements the component requirements and the price differentials of the Buy American Act may be waived.

DOD LEGISLATIVE RESTRICTIONS--FOOD,  
CLOTHING, SPECIALTY METALS, AND SHIPBUILDING

Provisions in the annual Appropriations Act have prohibited DOD, with several exceptions, from procuring clothing, food, specialty metals, and certain fabrics that are not grown, produced, or manufactured in the United States. Products in these categories include textiles (wool, cotton, and synthetic fabrics), shoes, uniforms, subsistence items, and specialty metals, such as stainless steel.

DOD is restricted from purchasing these commodities from foreign sources regardless of the budgetary impact. It has not estimated the impact of these provisions in the Appropriations Act, and we doubt that meaningful estimates could be made.

Purchases restricted to domestic sources for textiles, subsistence items, and shipbuilding amounted to about \$3.9 billion in fiscal year 1974. Total purchases of textiles and subsistence items amounted to about \$1.5 billion. About \$135 million of these products were, in fact, purchased from foreign sources under exception clauses of the legislation. These exceptions include products not available from domestic sources or products purchased under emergency conditions.

The restrictions on foreign supply sources also apply to the construction and conversion of naval vessels and provide that funds cannot be used for construction of the major components of the hulls or superstructures of any naval vessel in foreign shipyards. DOD's total shipbuilding expenditure was about \$2.4 billion in fiscal year 1974.

The restriction on specialty metals precludes with narrow exceptions (see p. 63) procuring articles containing foreign-source specialty metals. The provision requires both prime contractors and subcontractors to assure that any of the specialty metals used in articles delivered under



contract will be melted domestically. Contracting officers have indicated that specialty metals are usually incorporated as components in six major commodity classes--aircraft, missiles and space systems, ships, tank-automotive systems, weapons, and ammunition. The DOD management information system does not disclose expenditures for specialty metal components in these categories.

#### DOD FOREIGN-SOURCE PURCHASES

Purchases of foreign-source items in fiscal year 1974 totaled about \$3.38 billion and included services, construction, research and development projects, and supplies and equipment.

Of the \$7.3 billion that DOD spent for services, \$1.7 billion, or about 23 percent, was purchased from foreign sources. Most of these expenditures were for operation and maintenance of Government-owned facilities; medical care for dependents; and utility, laundry, guard, landscaping, janitorial, and custodial services. These expenditures were made in support of U.S. Forces overseas and would not have been subject to much, if any, competition from U.S. sources.

In addition to expenditures for services, \$158 million for construction projects (7.2 percent of DOD's total of \$2.2 billion) was spent overseas. For the most part, the contracts were awarded to, and the work was done by, firms in the country where the construction was to be done. There were relatively few U.S. firms competing for these jobs.

Because of the close relationship between research and development projects and major weapon systems, such purchases are usually restricted to domestic sources. Only \$79 million (about 1.3 percent) of DOD's \$5.8 billion of expenditures for research and development was awarded to foreign sources, and in many instances, these awards were influenced by such factors as joint efforts with NATO member countries to standardize weapons systems.

The purchase of supplies and equipment from foreign sources totaled about \$1.45 billion in fiscal year 1974. Most of this was for fuels and other petroleum-based products. Of the total \$2.4 billion DOD spent for these products, \$996 million, or 41 percent, was for products from foreign sources which were used primarily at overseas military installations.

A breakdown of supplies and equipment purchased from foreign sources follows:

<u>Item</u>	<u>Amount</u>
	(millions)
Fuels and other petroleum-based products	\$ 996
Subsistence (food)	90
Aircraft and airframe components	114
Communications equipment	36
Engines, turbines, and components	30
Other items	<u>184</u>
Total	<u>\$1,450</u>

Only about \$10.4 million (0.3 percent of total foreign purchases), was awarded under conditions which allowed for competition from both domestic and foreign sources. In these cases, the foreign bids either were able to overcome the price differentials of the Buy American Act or foreign sources were awarded the contract because domestic firms did not bid.

#### OTHER AGENCY LEGISLATIVE RESTRICTIONS

Procurement data for four of the six agencies was obtained on a commodity or product basis. For this reason, legislative restrictions such as those involving small business concerns, Federal prison industries, and the industries for the blind were not specifically identified.

The Interior and the National Aeronautics and Space Administration, however, because they compiled their information for our review from individual procurement actions from their Bureaus (rather than on a commodity basis), did identify these specific set-aside procurements.

Interior estimated that about \$288 million of its procurement was for domestic supplies and services purchased from either small-business or labor-surplus set-aside sources, from educational or other nonprofit organizations, or through contracts with Indian tribal governments. These actions precluded foreign sources of supply.

NASA identified about \$90 million of procurement actions that were placed with small businesses on a set-aside basis.

These purchases included such items as miscellaneous commodities, printing services, construction and electronic items, identification badges, drinking water, fertilizers, and equipment repairs. An additional \$4.4 million was identified as being awarded on a minority set-aside basis.

Tennessee Valley Authority's procurement of enriched uranium for nuclear powerplants was limited to domestic sources of supply. These purchases, identified on a commodity basis, totaled about \$16 million.

### PRACTICAL CONSTRAINTS

Much government procurement is not subject to foreign competition, not because of the buy-national legislative practices, but because domestic suppliers have tremendous inherent practical advantages--language, proximity, and familiarity. Also, certain types of procurement--services, research and development, construction materials, utilities, and sole-source and emergency purchases--favor the domestic supplier. Because of these practical constraints about \$16.6 billion, or about 37.2 percent of the procurement reviewed, went to domestic sources.

It should be noted that, even though some products have been identified in this report as being restricted by specific legislation and policies (appropriations act and national security restrictions), many of these same products would have had little, if any, effective foreign competition because of such practical constraints as superior U.S. technology in weapon systems.

DOD procurement, identified as being restricted to domestic sources for practical considerations, was about \$10.5 billion (excluding petroleum), or 24 percent of total procurement. Most procurement was for services; a small portion was for research and development, which was not of a national security nature.

The following figures show the extent to which these practical constraints have restricted the procurement of the five civilian agencies to domestic sources.

	<u>Total agency procurement</u>	<u>Restricted by practical constraints</u>	
		<u>Amount</u>	<u>Percent</u>
	(millions)	(millions)	
Transportation	\$ 504	\$ 482	96
Interior	790	330	42
TVA	988	452	46
NASA	1,971	1,648	84
ERDA	<u>3,391</u>	<u>3,214</u>	<u>95</u>
Total	<u>\$7,644</u>	<u>\$6,126</u>	80

Most of this procurement was for services, research and development, and studies.

Construction contracts and contracts for commodities in which the United States is a net importer have also been included as purchases restricted for practical purposes.

### Services

All six agencies identified the procurement of services as being limited to domestic sources for practical reasons. Included were contracts for transportation, maintenance and repair, modification of equipment, education, architecture and engineering, computer information, housekeeping, training, medical care, salvage, and other professional and non-professional services. These service contracts may require that special conditions be met by the supplier such as immediate availability and delivery, specially trained personnel, local expertise, and other considerations which would severely restrict competition by foreign firms.

DOD, for example, contracted for such services as aircraft modification and maintenance and repairs, medical care for dependents, film processing, lectures for training, food processing, transportation, painting, ground maintenance, and many others that could be performed only by domestic firms.

Specific items identified by NASA included work for the space programs, special assistance to educational institutions, the alteration and maintenance of buildings and property, leasing agreements, lighting services, printing and reproduction, food processing, library and information services, and others.

The Department of Transportation named transportation of goods, maintenance, repair and overhaul of equipment, special assistance to educational institutions, computer services (hardware/timesharing), and architectural and engineering services in this category with no effective foreign competition.

### Research and development

Research and development contracts, for practical reasons, are placed predominately with domestic sources.

Research and development awards are not made entirely on the basis of price but on other considerations, such as capabilities, resources, and past experience. Most of the contracts are negotiated with firms that have had previous experience in the field of research to be done.

For these reasons it is extremely difficult for a foreign firm to be competitive. Lack of familiarity with organization structures and agency needs, security considerations, different systems or standards of measure, superior U.S. technology base, and other practical considerations tend to make foreign firms reluctant to bid on U.S. projects.

In one instance Interior considered making research awards to British firms for mineral sampling. The firms either were not competitive or could not do the work. Some of the reasons cited included the foreign firms' inexperience in the specific areas, the lack of effective techniques, and the unfamiliarity with local mining regulations.

Though Transportation exchanged information and findings on transportation problems with foreign countries, it awarded almost no research and development contracts to foreign sources. Procurement officials agreed that some of the major reasons for this lack of awards to foreign sources were the practical constraints inherent in such procurement.

DOD procurement in this area was about \$5.8 billion in fiscal year 1974. Most of these contracts were previously identified as being restricted to domestic sources for national security reasons. However, even if these legislative restrictions were not in effect, it is unlikely that any significant portion of the total amount spent would be awarded to foreign sources because of practical factors.

DOD procurement officials stated that, in most cases, foreign firms did not even have a U.S.-based representative to monitor the requests or invitations for bids for new projects. Also, security precautions by DOD impede the ability of foreign firms to obtain pertinent information before and after awards. Many research and development projects are ongoing, which make it imperative that a firm be involved in the conception and definition of the specific projects. Representatives of a foreign firm involved in this area said that reaching that part of the "learning curve" attained by a firm originally involved in a project would be extremely difficult without excessive start-up costs.

In addition to these practical barriers, the United States has a technological advantage over most nations. Therefore, U.S. Government agencies are reluctant to participate in extensive research and development programs if it involves the transfer of technology without adequate compensation. These practical, legislative, and policy constraints have resulted in only about 1 percent of all DOD research and development expenditures in fiscal year 1974 being awarded to foreign sources.

#### DOD procurement of petroleum products and fuel

Articles purchased as end items or components which are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or are not of satisfactory quality may be procured overseas. The only items of significant dollar value were petroleum and crude oil. Those that were purchased from foreign sources were mostly for direct support of our military forces overseas. Because the product was not available domestically in sufficient quantities to meet demand, foreign sources had to be solicited and used.

DOD purchased about \$2.4 billion of these products in fiscal year 1974. About \$996 million, or 41.5 percent, was purchased from foreign sources.

#### Construction materials

Although practical considerations restrict the use of most foreign construction materials, the Buy American Act creates an absolute price preference to U.S.-source construction materials and restricts those that could be competitive.

In chapter 6 we explain that, when the Buy American Act is applied, a contractor cannot bring raw material of foreign origin to a construction site for assembly of an item to be incorporated into a public building or work. Preassembled items containing foreign components (comprising less than 50 percent of the total material cost) may be used in construction for U.S. agencies.

Of the \$134.8 billion of new construction in 1974, less than \$5.4 billion, or 4 percent, was for projects owned by the U.S. Government and, hence, subject to the Buy American Act restrictions.

Foreign-source products that could effectively compete for use in construction are restricted because of the procedures in awarding contracts. Unless the request for bids designates foreign materials (not available from domestic sources), the contractor must either furnish all U.S.-source materials or submit an alternative bid designating foreign-source items and demonstrate that the cost of U.S.-source materials is unreasonable.

The burden of demonstrating unreasonable costs rests on the contractor. He must show that the cost of U.S.-source materials exceeds that of foreign-source materials by the amount of the price differentials. According to Government procurement officials, alternative bids are not used because the trade (contractors, subcontractors, manufacturers, and suppliers) has not questioned the premise that U.S.-source materials are required. It is not practical for the contractor (that has to deal with many subcontractors that, in turn, deal with many manufacturers and suppliers) to take on this additional burden of submitting an alternative bid with foreign-source items when the chances for an award are minimal. Contractor estimates are time consuming and expensive and, with staff and bid time constraints, contractors are limited in the time they devote to any single estimate.

Data for fiscal year 1974 shows relatively small amounts of U.S. imports and exports of major construction materials to total materials used. Imports totaled \$618 million, and exports for this period totaled about \$860 million. Some of the materials that, in the absence of the Buy American Act, would probably be competitive in Federal procurement follow.

CommodityPrincipal sources

Ceramic tile	Japan and United Kingdom
Worked marble and granite	Italy
Cement and cement clinker	Canada, United Kingdom, Bahamas, and Norway
Fabricated structural steel and miscellaneous metal products	European countries and Japan
Concrete reinforcing bar	Belgium, Brazil, and Argentina
Vitreous plumbing fixtures, metal plumbing fixtures, and furnace burners	Mexico
Hinges and padlocks	Japan, Canada, Hong Kong, West Germany, Italy, Taiwan, and United Kingdom
Glass fiber-insulation	Canada, West Germany, and Sweden

The result of using solely U.S.-source raw materials in Government projects has a budgetary impact. Although there is no practical way to estimate this, we conclude that the cost to the Government is not large in relation to the contract price for a project.

Historically, U.S. trade in construction materials has been small and has contributed relatively little to the overall world demand for these materials. Imports of foreign-source materials contributed less than one-half of 1 percent of total construction used in the U.S. in 1974. Construction industries tend to use materials native to their own countries. Furthermore, the weight and bulk of most basic building materials make transportation expensive. Most trade in building materials has, therefore, taken place between neighboring countries. Widely differing national product standards, building codes, and accepted testing methods have also restricted trade.

Factors that now favor some rise in exporting U.S. building materials include the growing overseas market, material shortages overseas, worldwide inflation, and exchange rate adjustments that make U.S. goods more price competitive.

A major factor encouraging building material imports into the United States is our large market, which allows foreign firms to establish large efficient plants to produce goods just for this market.



## Review of procurement actions

A sample of individual procurement actions of four of the six agencies were reviewed to more clearly identify that portion subject to competition from both domestic and foreign sources.

### Department of the Interior

Interior's analysis of its procurement showed that about \$172 million, of a total \$790 million, was potentially subject to effective foreign-source competition. Of the items purchased for which foreign competition was probable, electrical equipment accounted for close to \$100 million. However, only about \$3.4 million of the \$100 million actually was awarded for foreign-source items. Of the remaining \$72 million, awards totaling \$10.3 million were made for such foreign-source items as electronic and mechanical equipment, metal work, and power line insulators.

Of the \$172 million of procurement identified as being subject to foreign competition, \$90 million of the procurement actions were reviewed. These actions, selected from 4 of Interior's 19 bureaus, accounted for about 50 percent of both total procurement and procurement subject to foreign and domestic competition.

Our review showed that about \$86 million of the \$90 million in procurement actions examined was, in fact, subject to both foreign and domestic competition. However, even though the dollar volume of the contracts not subject to competition amounted to only 5 percent of the value of the contracts examined, one of every four was restricted to only one source of supply. Some of the products purchased by the Bureau of Reclamation, for example, were for repair parts for existing equipment and purchases restricted to parts from the original manufacturers. Some special pieces of electrical equipment were purchased on a sole-source basis. Fifteen of the 64 contracts reviewed from the Boise and Grand Coulee Dams of the offices of the Bureau of Reclamation were for services such as studies, research, training, appraisals, and inspections, for which foreign sources could not have effectively competed. Of the 100 contracts reviewed from the Bonneville Power Administration, 19 did not lend themselves to foreign competition for practical reasons.

Even though 25 percent of all of the procurement actions reviewed lacked effective competition, they were

for items whose dollar value was relatively small. High-value items, such as transformers and other large pieces of equipment, were subject to competition from foreign sources.

Of 294 contracts reviewed, totaling about \$90 million, 82 contracts (\$81.2 million) included bids from foreign sources and 43 contracts (\$11.6 million) were awarded to foreign sources. Of these, 17 contracts (\$1 million) were awarded to the foreign source on a sole-source basis (original and repair parts for existing equipment, custom-made items) or for items for which there was no U.S. competition. In two cases, foreign-source bids were awarded the contract even though they were not the lowest bidders (the U.S. bids were nonresponsive).

#### Department of Transportation

Our initial evaluation of Transportation's procurement showed that about \$21.8 million was for commodities potentially subject to both foreign and domestic competition. A review of 60 of the 160 actions in this category was made on a random sample basis. Our results projected that about \$10.1 million, or 46.2 percent, of the awards were not affected by foreign competition. Of the 13 U.S. Coast Guard actions reviewed, 8 were for parts that had to be obtained from the original manufacturers or were repair parts for existing equipment.

All three of the awards reviewed from the Federal Highway Administration, though for commodities in which there was potential foreign competition, were restricted to domestic sources of supply. These contracts were for equipment purchased by the Agency for International Development and sent overseas as part of their foreign-aid program.

Many of the actions by the Federal Aviation Administration were either for proprietary parts--articles for which the Government does not have drawings or specifications available which would allow any other sources to produce and insure compatibility with existing equipment--or high-precision items which are purchased so infrequently that it may not be economically feasible for a foreign firm to begin producing.

Two contracts, totaling over \$2.5 million, were for fueling and defueling services of airplanes at the Will Rogers Airport, Oklahoma City, Oklahoma. On one contract

a domestic firm was the only oil producer-refiner with a company-owned pipeline with direct connections to the airport's fuel storage system. There was no way that other domestic firms, much less foreign firms, could effectively compete.

Of the 60 contracts reviewed, only 2 included bids for foreign-source items and only one was awarded the contract. In that contract, there were no responsive domestic bids.

### Tennessee Valley Authority

The TVA originally estimated that about \$468 million of their \$988 million of procurement in fiscal year 1974 was not subject to both foreign and domestic competition. On a statistical sampling basis we reviewed 138 procurement actions thought to have been subject to competition from both sources. From this sample, we projected that an additional \$169 million was awarded under conditions for which competition was not likely from both sources. Of TVA's total purchases, \$351 million (35.5 percent) was actually subject to domestic and foreign competition.

Of the actions reviewed, 33 were found to have been either for repair parts for existing equipment or for changes to original contracts. Sources of supply were restricted, and it would have been impractical for new sources to have been solicited. Similarly, 11 contracts were awarded on an emergency basis for items needed in a short time frame that was not practical for obtaining bids from foreign sources.

TVA awarded about \$194 million for foreign-source items during fiscal year 1974. One contract for steam turbine generators for a nuclear plant accounted for over \$184.4 million. Each of the three domestic firms submitting proposals on this contract refused to accept all of TVA's contractual provisions relating to product warranties and performance requirements. The foreign firm was the only bidder that was responsive to the terms, conditions, and delivery requirements of the invitation. Of the remaining \$9.5 million, only \$487,000 was awarded for foreign-source items that had domestic competition. All other awards for foreign-source items were made either on a sole-source basis or under conditions where there was no domestic competition. About \$3.5 million was for other than major purchases or for foreign materials from domestic vendors. These purchases included modifications and changes to existing contracts.

## Department of Defense

About 15,000 procurement actions totaling \$750 million were initially identified as potentially subject to foreign competition. We reviewed 255 of these actions and estimated that 29 percent, or 4,400 actions totaling \$344 million, were purchased under conditions which would have excluded competition from both domestic and foreign sources.

For example, nine contracts and one modification to an existing contract totaling \$2.5 million were awarded to domestic suppliers of rubber tires. Extensive special tooling was required to produce these tires which were not suitable for the civilian market. In addition, shipping costs, unavailability of specifications abroad, relatively competitive nature of the industry, and requirements for a chemical specified by DOD to insure longer storage life of tires effectively excluded foreign sources of supply.

Other commodities found to have had no effective competition from foreign sources included military equipment (special trucks and tractors), sole-source items, special drugs and medicines, special services, and equipment that required extensive service and installation.

Sixteen actions, totaling about \$6.5 million, were for additional work on a modification to the basic contract. The placing of such awards does not involve competition since only one source of supply was considered by the purchasing office. Eleven other actions, totaling about \$8 million, amended or modified existing contracts and did not change the scope of the work but did obligate or deobligate funds. Eight other actions for about \$1.1 million, were either change orders or termination or cancellation of contracts.

Of the 255 contracts reviewed, 9 were found to have foreign competition. Seven of these, however, went to Canadian firms which DOD treated as domestic-source, when competing with U.S.-source products, and not subject to the application of the price differentials of the Buy American Act. One contract included a bid for Italian-source products, but after determining that not all of the specifications were met, that bid was rejected for being nonresponsive. Another contract included a bid for items manufactured in Costa Rica. Even though the foreign-source bid was initially low, after application of the price differentials, the award was made to the lowest domestic-source bidder.

## PROCUREMENT SUBJECT TO COMPETITION FROM U.S. AND FOREIGN SOURCES

We projected that only about \$1.3 billion, or about 3 percent of total procurement for the six agencies reviewed, was subject to competition from both U.S. and foreign sources. Most Government procurement is tied to U.S. sources because of national security considerations, legislative restrictions, and practical constraints.

The \$0.5 billion adjustment on the chart on page 12 is based on our statistical sampling of procurement actions of four of the six agencies.

A review of foreign purchases from the four agencies sampled, which accounted for about \$0.9 billion of the \$1.3 billion of procurement, showed that about \$220 million, or 24 percent, was awarded to foreign sources where domestic sources were available. One contract awarded by TVA accounted for about \$184 million of this amount.

The 3 percent of Government procurement, for the 6 agencies, which is potentially subject to domestic and foreign competition also represents, with minor exceptions (see app. II), that portion which would be potentially subject to the application of the price differentials of the Buy American Act. This is apparent since this application is based on effective price competition between domestic and foreign suppliers.

### IMPACT OF BUY-NATIONAL PRACTICES

U.S. buy-national practices, by restricting the purchase of foreign-source products, undoubtedly increase Federal Government procurement costs. It is, however, impractical to estimate the magnitude of these additional costs.

Analysis of these restrictions shows that the more significant ones, in terms of budgetary impact, were DOD's national security considerations and Appropriation Act restrictions. The Buy American Act has a lesser impact.

The purchase of petroleum products, for which the United States is a net importer, and procurements, where the sources of competition were exclusively domestic or exclusively foreign because of practical constraints, are not affected by buy-national practices

A questionnaire was sent to eight executive agencies requesting information they had developed on the impact and the budgetary costs directly attributable to the Buy American Act and these other buy-national practices.

Of the eight, only DOD had ever attempted to determine the impact of restrictions on the purchase of foreign products; in this instance, the impact of the 50-percent price differentials of the Buy American Act. They concluded that the budgetary impact appeared to be relatively small but that the real magnitude was unknown, and it was unlikely that any estimate could be demonstrated unequivocally.

The restriction of purchases of foreign-source military systems due to national security considerations is based on economic, political, and military considerations which make it difficult to estimate the extent and type of foreign competition permitted.

We also believe it is not practical to make a meaningful estimate as to the budgetary impact of the DOD Appropriation Act and the Buy American Act provisions. The absence of comparative domestic and foreign bids for specific procurement actions creates a situation where the real magnitude of the budgetary impact is unknown and estimates are subject to significant error. The unknown factor of contractors that did not bid because of these buy-national practices would distort any estimates. Product modifications, price fluctuations, scarcity periods, changing international economic and monetary conditions, and other variables which are difficult to predict and evaluate, make estimating the budgetary impact speculative.

We have shown that a relatively small amount (\$406 million) of DOD's procurement is subject to competition from both domestic and foreign sources. For this procurement, the foreign bidder must overcome a 50-percent price differential of the Buy American Act in favor of the domestic bidders. Foreign-source competition was virtually excluded because of the high level at which the differentials were set.

Agency procurement officials commenting on the impact of the Buy American Act stated that there would not be a significant shift in Government procurement from domestic to foreign sources as a result of removing these restrictions. This view is supported by our data which shows that only a small percentage of total procurement is potentially subject to both domestic and foreign competition. The impact

of the Buy American Act, however, would increase if some of the other buy-national practices were removed.

Procurement officials' views on commodities most subject to foreign competition in the absence of buy-national practices follow:

- DOD--Textiles, clothing, shipbuilding, and subsistence items.
- GSA--Handtools, wall board, building paper, thermal insulation materials, photographic equipment, office supplies, office devices and accessories, stationery, and record forms.
- Interior--Electrical equipment, such as generators, transformers, circuit breakers, and tower steel.
- NASA--Scientific and electronic equipment, instruments, and systems.
- TVA--Steel, turbines, turbogenerators, large electrical equipment such as transformers, circuit breakers, insulators, and generators.

Even though overall estimates of increased costs or savings attributable to buy-national policies are impractical to make, there were specific instances of savings where awards were made for foreign-source products.

Between 1956 and 1971, when TVA began inviting foreign bids on certain classes of equipment, about \$96 million was saved through awards to foreign suppliers with lower bids. In fiscal year 1974, about \$9.8 million was saved by accepting foreign bids. Savings were not restricted to those obtained from the purchase of foreign materials. Additional savings were probable because bids from domestic suppliers may have been more competitive because of the foreign competition.

In addition to cost savings, TVA officials commented that effective foreign competition has resulted in technological advances and has encouraged quality improvements in products which indirectly keep production costs down.

Our detailed review of the 36 Bonneville Power Administration contracts awarded to foreign bidders in fiscal year 1974 showed that 25 of the awards were made for items not available from domestic sources, replacement parts for original foreign equipment, or items to which U.S. bidders were nonresponsive. Eleven awards were made to foreign suppliers with low bids. The total amount of the 11 foreign-source contracts was \$880,000, or 18 percent, less than the total of the lowest responsive domestic bids.

## CHAPTER 4

### VIEWS OF U.S. INDUSTRY

Among the industries most affected by foreign competition and protected by the various buy-national practices of the U.S. Government are the textile, steel, specialty metals, and heavy electrical equipment industries. Although sales to the Government make up only a small percentage of their total sales, these industries favor continued governmental protection as being supportive of our national security interests and equitable, considering the restrictive procurement practices of our trading partners. Industry representatives emphasize the importance of increased U.S. governmental support of domestic markets, particularly to protect against unfair trade practices and the subsidies foreign governments provide their firms.

Of the sales to U.S. governmental agencies, the specialty steel and textile industries produce primarily for the Department of Defense and, as a result of the legislative and practical restrictions on comparable foreign items, face very little competition from abroad. Because of the high level of protection afforded these industries by the buy-national policies, they prefer to retain the present system and are doubtful that any international agreement on governmental procurement would be either practical or beneficial to their firms.

Heavy electrical equipment manufacturers make large sales to the civilian Government agencies but face foreign competition even with the 6- or 12-percent price differential of the Buy American Act.

### TEXTILE REPRESENTATIVES

Six major textile manufacturers said that nearly all sales to the U.S. Government are made to DOD. Estimates of the extent of such sales ranged from less than 1 percent to about 5 percent of the firms' total sales. The products sold include uniforms, tents, tarpaulins, parachutes, and textile raw materials for the manufacture of powder bags for ammunition.

Sales to the Government must meet very demanding specifications and must be filled in a relatively short time, usually not exceeding 6 months. Textile representatives told us that these exacting specifications at present effectively preclude foreign competition but that



other industrialized countries have the technology to satisfy the specifications. The manufacturer's need to be concerned over Government specifications is sometimes obviated, however, by the use of a dealer that subcontracts for materials, dyeing, manufacturing, and such. The textile manufacturer supplies unfinished products to the dealer that is ultimately responsible for the finished product meeting Government specifications.

However, the lack of continuity of Government orders, the need for specialized equipment, and the fluctuations in demand reduce the desirability of such business.

Company representatives felt that the monitoring of supply sources to guarantee compliance with buy-national provisions was adequate. Monitoring efforts include governmental inspections at the factories before shipment and required laboratory reports. Industry's acceptance of the Buy American requirements insures that only domestic sources of supply are used.

The fact that legislation exists requiring DOD to procure only from U.S. sources, regardless of price (Appropriations Act), while civilian agencies may procure from abroad if domestic prices exceed foreign bids by 6- or 12-percent, did not concern the textile representatives. This may be because civilian agency sales make up only a small portion of their sales to the Government.

U.S. manufacturers we contacted have no major interest in selling to foreign governments or nationalized industries. Although most of these companies sold in the private foreign market, they said pursuing sales to foreign governments was unrealistic. One textile representative said he was philosophically opposed to lowering government procurement barriers and that governments should use internally generated tax funds to support domestic industries.

Industry opposed lowering the present procurement barriers for several reasons. They felt that the potential for penetrating foreign government markets would remain almost nonexistent. Also, penetration of the U.S. market by foreign manufacturers would have an unfavorable effect on the domestic mobilization base of the United States. Without this base, industry felt it would be difficult to supply the necessary textiles in times of national emergency. As an example, industry spokesmen pointed to heavy fabric items--tarpaulins, tents, truck covers, etc.--which are currently being produced by two manufacturers in the

United States. Sales to the Government make up roughly 50 percent of total sales for these items. We were told that if this volume of sales were lost to foreign sources, it would no longer be economically profitable to produce these items. DOD recognizes the strategic importance of the domestic textile industry and has placed orders, contingent on an emergency with textile firms, to expedite initial procurement efforts.

### STEEL AND SPECIALTY METAL REPRESENTATIVES

To clarify industry views on the implementation of Federal Government buy-national practices, we interviewed representatives of four U.S. steel and specialty metal companies and an industry representative.

DOD is the primary Government purchaser of domestic steel and specialty metals. However, sales to all Federal agencies account for only a small percentage of total sales by U.S. firms. For example, U.S. Steel's sales to the Government constitute less than 5 percent of total sales. Of its Government transactions, more than 95 percent are to DOD. Steel and specialty metals purchased by DOD are mostly for military items and, in order of decreasing magnitude, include such product categories as ammunition, shipbuilding, construction, and military supplies. Such procurement, since it involves national defense systems, is largely excluded from foreign competition. Large quantities of steel are also used in Federal construction programs and, as explained in chapter 3, are not subject to foreign competition.

We conclude that, except in very few instances, DOD does not procure foreign steel and is precluded by legislation from purchasing foreign specialty metals. Representatives of U.S. steel and specialty metal companies interviewed commented that, as far as they knew, DOD was using mostly domestic steel and specialty metals, and its procurement practices were in compliance with U.S. buy-national policies.

The steel companies do face competition from foreign sources in sales to Bonneville Power Administration, Bureau of Reclamation, and the Tennessee Valley Authority. However, the only product line steel representatives identified as being seriously affected were steel power transmission towers. Despite the 6- and 12-percent differentials, sales have been lost to foreign sources.

Further information and comments were provided by firm representatives.

--With minor exceptions, sales are not made to foreign governments or their nationalized industries. Foreign governmental entities generally apply absolute preferences to their domestic sources.

--The Buy American restrictions do not extend to Federal grants to States for projects relating to transportation systems, highway construction, urban renewal projects, local water and sewer facility construction, and model cities programs. Federal restrictions that apply to equal employment opportunity, wage rates, etc., flow with Federal grants, and it is believed that buy-national preferences should also.

--Negotiations to promote international governmental procurement for the United States and its trading partners are viewed with skepticism for reasons described in chapter 5. One steel representative said his firm would not favor abolition of U.S. preferences. Experience shows that other countries will continue to resort to obscure administrative means of favoring their domestic industries. An international procurement code would dismantle U.S. preferences but provide no real benefit vis-a-vis foreign preferences.

--Foreign competition is viewed as a problem. In 1971 foreign imports accounted for a record of nearly 18 percent of the domestic steel market--about 12 times higher than the percentage in 1957. During 1975 foreign steel comprised about 13 percent of the American market for steel. The balance of trade has generally deteriorated notwithstanding the devaluation and flexible exchange rates. The steel deficit in 1970 stood at less than \$1 billion. By 1974 it had grown to \$3 billion and remained at the high level of \$2.23 billion in 1975.

--Information furnished by the steel representatives shows that 44 percent of the entire world's steel-making capacity of about 783 million tons is directly owned by foreign governments. Economic planning by these governments stresses full employment and establishes high-export goals, and the United States is the biggest and most open market

in the world. These governments provide low-interest loans, grants, favorable tax laws, etc. to domestic steel producers.

--One example of the impact of foreign competition was the decision of Bethlehem Steel in September 1975 to cease the fabrication of structural steel. The company was the second largest fabricator of structural steel in the United States. Bethlehem attributes this decision in part to severe price competition by foreign fabricators in the U.S. market.

--Steel representatives expressed dissatisfaction with remedial actions under United States countervailing and antidumping statutes that are intended to protect U.S. companies from unfair trading practices by foreign firms. They believe there is administrative bias because of foreign policy considerations. One complaint is that Treasury regulations permit early termination of dumping restraints which tends to reduce the deterrent to such practices. A second complaint concerns the lack of any objective guidelines or criteria applicable to injury determinations by the International Tariff Commission.

--Concern was expressed over unfair subsidies paid by governments overseas on steel that is exported to the United States from European Common Market countries. For example, through the border value-added tax adjustments, Belgium, England, France, Italy, Luxembourg, Netherlands, and West Germany subsidize their steel producers with sums ranging to more than 30 percent of the sales value on each ton of steel product shipped to America. The Treasury Department refused to add extra duties to equal the subsidy. Treasury's rationale is based on an international treaty--General Agreements on Tariffs and Trade--and interpretations of the U.S. Countervailing Duty Law. They hold that under GATT, rebates of direct taxes, such as income taxes, are illegal; rebates of certain indirect taxes, such as sales taxes, are permitted. Under GATT rules, the rebate of the value-added tax in the export of steel is considered the rebate of an indirect tax. Treasury believes that international trade talks should consider eliminating the distinction between direct and indirect taxes.

## HEAVY ELECTRICAL EQUIPMENT REPRESENTATIVE

Heavy electrical equipment includes large steam turbines, generators, power transformers, and power circuit breakers. The steam turbine and generator are often purchased as a unit. The power transformer is used to raise the voltage level of electricity coming from the generator so it can be transmitted over long distances. At substations, transformers are also used to reduce the voltage level for ultimate distribution to the consumers. Power circuit breakers provide protection against unsafe circuits and electrical problems at generating stations and network substations.

Heavy electrical equipment have some common characteristics:

- The equipment is physically large. Assembled transformers can weigh 285 tons while a steam turbine and generator unit sometimes weigh over 2,000 tons. Circuit breakers, the smallest of the three, weigh several tons.
- The equipment is technically complex and often designed jointly by the customer and manufacturer.
- Construction of equipment can take from 1 to over 5 years to complete. Heavy electrical equipment differs from the smaller size electric power equipment which is usually produced in assembly-line fashion. No uniform world market exists for small electrical equipment because of the differing national electric standards.

A heavy electrical equipment manufacturer is of the opinion that obtaining absolute proof that some specified fraction of complex electrical apparatus is of U.S. manufacture is impractical and perhaps impossible. To trace the extent of foreign componentry, full access would be required to material usage and invoice records, import duties, production, and shipments of all involved assemblers and their suppliers and importers.

For example, even though the nameplate of a large piece of electrical power equipment clearly shows its place of manufacture to be the United States, it may be impossible to determine by inspection the country of manufacture of the various castings, forgings, fabricated components, and other parts or their costs in relation to the price of the complete machine.

The problem is equally difficult for low-power assembled electrical apparatus, such as computers and control equipment, or for small functional apparatus.

However, it is practical and customary for manufacturers to provide with their bids a generic bill of material with U.S. and foreign content designated, and the successful bidder could attest to compliance with this original bid upon delivery of the equipment. Obviously, transactions involve and depend upon good faith in compliance. If the customer suspects noncompliance, it is usually possible for him to detect gross noncompliance by closely scrutinizing the generic bill of material in the original bid and the various transaction documents and by making a careful physical examination of the apparatus.

The desire to develop and maintain a heavy electrical equipment industry in the major industrialized countries has led to the creation of procurement barriers to prohibit or regulate imports of this equipment. The virtual exclusion of heavy electrical equipment imports by the utilities of Europe and Japan contrasts with the less restrictive foreign procurement policies of the U.S. Government, as implemented by TVA, Bonneville Power Administration, and the Bureau of Reclamation. The 6- or 12-percent differential of the Buy American Act has not prevented these agencies from making major foreign purchases.

Industry sources believe the unequal access to the heavy electrical equipment market between the United States and its trading partners has an adverse impact on the U.S. labor market and U.S. manufacturers' ability to maintain an industrial capability in heavy electrical equipment. They feel there is a vast commercial and competitive difference between the Buy American differential, which puts a burden on, but allows, foreign competition, and foreign government policies, which preclude any imports or foreign-made electrical equipment by government-owned or government-controlled utilities.

Attempts to lower foreign procurement barriers are viewed with skepticism by U.S. manufacturers. They believe European countries and Japan will continue to be unwilling to accept competition on an equal basis with U.S. firms. They also feel that any reciprocal agreement could be easily subverted because of the difficulty of proving discriminatory procurement practices since so many factors are involved in procuring complex electrical equipment.

In the absence of an effective agreement, U.S. electrical equipment manufacturers feel that discrimination against U.S. exports should be offset by retaliation that is equally detrimental to the exports of the offending countries.

Although the Buy American Act applies only to Federal procurement, buy-national practices have been observed by a number of investor-owned and municipal utilities, which purchase most of the heavy electrical equipment in the United States. Buy-national practices vary over a broader range within the private and municipal or State electric utility sectors than in the Federal utility sector.

At one extreme, a few private and municipal utilities specify U.S. manufacture as a flat requirement. Many others do not specify U.S. manufacture but either do not invite or do not honor foreign bids. Some States and many local governments discriminate against foreign producers through a variety of State constitution provisions, statutes, ordinances, and informal policies.

At the other extreme, some large investor-owned U.S. utilities have bought foreign electrical equipment in what amounts to a reverse-discrimination situation. Purchase was made seemingly because of concern that changes of domestic preference might otherwise be made by State utility-regulating commissions.

A representative of a heavy electrical equipment manufacturer commented that, on the whole, private, municipal, and State utilities afford greater protection to U.S. manufacturers than does the Federal Government.

## CHAPTER 5

### BUY-NATIONAL PRACTICES OF TRADING PARTNERS

Although our trading partners do not publicize their buy-national practices, their governmental agencies and nationalized industries generally maintain closed bidding systems and their procurement practices show a pervasive bias against foreign sources. Some reasons cited by procurement officials for limiting procurement to domestic sources follow.

1. The most frequently expressed reason is a traditional tendency to favor domestic firms. Procurement officials cited some advantages of this favoritism: familiarity and ease of dealing with local suppliers; the ready availability of service, maintenance, and repair parts; and the greater facility to legal recourse against an incorporated domestic company in case of contractual problems.
2. Officials desire to protect domestic companies and jobs. According to procurement officials this rationale is presently being invoked frequently because of recessionary trends in their respective economies.
3. The national aspirations among the European countries and Japan tend to encourage high-technology industries that are competitive with American technology.

The prevalence of buy-national practices in restricting procurements from foreign sources is also evident in that none of the foreign government officials or U.S. business representatives we interviewed could identify any significant imports for these countries when items were available from domestic sources.

A government procurement official and overseas representatives of U.S. businesses said the favoritism accorded domestic manufacturers sometimes resulted in higher costs and inferior products. The conflicting priorities of striving for efficiency in operations and attempting to support domestic industry is troublesome to officials of nationalized industries. They are expected to operate as efficiently as possible; yet, they are under pressure from domestic labor and business to support domestic industry.



U.S.- and other foreign-based companies, which attempt to sell to the German, French, Japanese, or British Governments, have almost no chance of being awarded contracts unless the item is technically superior or not manufactured in those countries. All the sales representatives of U.S.-based firms we interviewed asserted that they had been unsuccessful in selling directly to these governments products which could be produced domestically. In Germany, however, sales of building equipment were made to prime contractors for constructing government buildings. U.S. businesses were successful in selling electrical building control systems and air-conditioners to contractors doing government construction even though similar products were available domestically in Germany.

If a U.S. subsidiary manufactures in Europe, its chances of selling to European governments are greatly increased. Most U.S. firms doing any appreciable business with the Japanese Government are in a joint venture with a Japanese firm or have a minor equity in a Japanese firm. A U.S. firm tied in with a well-known Japanese firm will find it easier to sell to the Government.

Some representatives of U.S. subsidiaries interviewed in Europe and Japan, whose products were technically superior, were able to generate government business and were generally satisfied with their market share. However, they were concerned over a shrinking government market because of the increasing competitiveness of domestic corporations.

Similar conclusions relating to the favoritism foreign countries accord to domestic suppliers in government procurement are contained in the Summary and Analysis of House bill 10710, The Trade Reform Act of 1973, by the Senate Committee on Finance, February 26, 1974. Information in this report was provided by the U.S. Tariff Commission (now the International Trade Commission). The report stated in part that:

"Most governments favor domestic suppliers over foreign ones in their procurement of goods. This is evidenced by the fact that the share of imports to total purchases in the public sector is much smaller than in the private sector. Governments are major purchasers of internationally traded commodities, hence the preferences they grant to domestic producers constitute a significant impediment to international trade."

The report noted that in Europe and Japan published regulations and laws favoring domestic suppliers are rare; nevertheless, discrimination against foreign suppliers exists and is generally surrounded by secrecy.

#### GREAT BRITAIN 1/

The procurement function is widely dispersed among the governmental departments, and procurement officials have considerable discretion in selecting the supply source.

The Department of Health and Social Security and the nationalized Central Electricity Generating Board are two examples of this widely dispersed procurement responsibility. According to a Health official, procurement is made at four levels:

- The district level which consists of 1 to 10 hospitals.
- The approximately 90 health centers.
- The 14 regional health authorities.
- The ministry level.

Procurement by the Board is dispersed in five separate regions throughout Great Britain, each responsible for its own procurement.

Efforts have been made to centralize the procurement function of the various agencies in the Property Services Division of the Department of the Environment. The Property Services Division has the primary function of procuring common-use items, such as equipment for Government buildings, building material, furniture, generators, fuel for buildings, machine tools, soaps, and furnishings for all British Embassies abroad. It also does the purchasing for those nationalized industries and research institutions that request assistance. The amount of procurement that passes through the agency, however, is still quite small. In 1972 and 1973, the Department of the Environment procured approximately \$209.5 million, or 18.9 percent, of Government procurement, excluding the nationalized industries.

---

1/England, Scotland, Wales.

Government officials said that, except for large computers, no written rules or regulations favor domestic procurement. However, in our discussions with procurement officials and representatives of U.S. businesses in Great Britain, we found a marked tendency to favor domestic suppliers. Large computers for Government use are purchased exclusively from International Computers, Ltd., subject to satisfactory price, performance, and delivery.

The procuring process makes it difficult for foreign suppliers to compete since only approximately 1 percent of contracts are openly advertised. The remaining contracts are about equally divided in dollar value between contracts negotiated with several selected suppliers and contracts with a sole source.

According to Government guidelines, no statutory authority directs the procurement policies of nationalized industries, which are intended to operate on a commercial basis. However, the Government influences procurement policies through its economic decisions.

An official of a nationalized industry commented that his agency's purchasing policies are very insular in nature, and he believes his agency purchases from foreign sources only to obtain products not available domestically or to keep domestic industry prices competitive. He said that the policy of favoring British firms has, at times, increased costs and led to products of lesser quality. Some reasons given by procurement officials in Great Britain for favoring domestic firms are:

- Since domestic firms are subject to English Contract Law, legal recourse against them in case of default or noncompliance is easier.
- Supporting domestic industries agrees with openly advocated governmental policies.
- Doing business with British contractors that are known to procurement officials and can provide the necessary servicing and delivery requirements is desirable.

An agency official told us that, because of current economic conditions, pressure is being applied to buy local products. Exceptions for foreign-source procurements are usually based on lack of domestic availability or quality consideration.

The Property Services Division of the Department of Environment purchases common-use items for all Government agencies. According to a Division official, awards are not usually made to foreign firms because they cannot meet delivery requirements, provide sufficient maintenance, or meet British specifications. Therefore, the Division buys from foreign firms only when an item is not available domestically.

Differing standards and technical specifications also act as a trade barrier. Some U.S. business representatives commented that such standards are not a deliberate attempt to exclude foreign competition, but result from differing development approaches. They note that British industry resents the differing standards since it makes it difficult for them to market overseas those goods which are produced domestically.

According to representatives of a manufacturing subsidiary of a U.S. multinational corporation located in Great Britain, it usually competes on an equal basis with British-owned manufacturing firms. Their sales consist of telecommunication equipment to the English Post Office. No attempts have been made to sell to the Government commercial items such as television sets, radio equipment, etc., because of the limited market. They said that several factors help them get Government contracts:

- They are a large export earner.
- They employ about 100,000 people in Great Britain.
- They maintain a low U.S. profile; market surveys show that most people think they are a British firm.

These representatives said that during the next several years quality and price considerations would not be the main criteria in Government purchasing because of depressed economic conditions. Particularly in times of high unemployment, as the value of materials and labor costs in England decreases, discrimination against the foreign subsidiary will increase.

Representatives of another U.S. corporation said they rarely do business with the British Government. This firm does not manufacture its electrical equipment in Great Britain. Instead, their London office is considered home base for business opportunities in other parts of the world. These

officials commented that, from past experience, they would not get Government awards anyway, and it is just too costly to work up an offer if it is not going to be considered. They cited a poor economy, political pressure, and local product specifications as major restrictions that affect their ability to sell to the Government.

## FRANCE

Operating on a partially centralized procurement system, the French Government leaves procurement responsibility to each of its various ministries and nationalized industries. The actual procurement is made either on a regional basis by the various operating units or through a central body for ultimate distribution to the operating units. For example, the nationalized electric utility of France procures small electrical components through 17 regional offices throughout France. On the other hand, over 90 percent of the procurement made by the Ministry of Education for high school and all university requirements are handled centrally by the Ministry.

A procurement code developed by the Ministry of Finance guides each of the various ministries. Other organizations, such as the nationalized industries, are not bound by the code, but follow it as much as possible.

We were not able to obtain statistics on total Government procurement or details on purchases of foreign-source commodities, but we did obtain annual estimates from the following Government agencies and nationalized firms.

<u>Agency</u>	<u>Annual budget (note a)</u>  (millions)	<u>Foreign procurement</u>  (percent)
Ministry of Health	\$ 952.4	5
L'Electricite' de France-- heavy electrical equip- ment	2,261.9	10
L'Electricite' de France-- small electrical equip- ment	416.5	5
Ministry of Education:		
Construction	761.9	(b)
Equipment	109.4	(b)

a/\$1.00 = 4.20 francs.

b/Data as to foreign procurement not obtained.

Representatives of the heavy electrical equipment section of 'Electricite' de France stated that approximately 10 percent of the value of purchases were from foreign sources and about 5 percent were not available domestically. The remaining 5 percent were purchased from the European Community. The other agency representatives told us that information was not available on the portion of their foreign procurement for which alternative domestic sources were available.

France does not have any formal "buy France" legislation; however, local firms are heavily favored by the French Government. French procurement officials stressed the convenience of dealing with domestic industry as an important factor in considering bids. Officials consider price, delivery terms, maintenance, and service. One Government official said his department usually selected French products because the delivery terms were more favorable. In our discussions with the procurement officials, it was apparent that they did not see limiting purchases to domestic sources as discrimination but rather as good business. They also doubted foreign firms' ability to service and deliver items promptly.

Procurement officials cited the current economic downswing as a factor for the Government's favoring domestic firms. They said business firms and labor unions seek preferential treatment for French firms, and they have strong lobbies to present their case to the French Government.

Representatives of a nationalized industry told us that if they can find an item in France and if the price is fair, they give it preference.

Under the French procurement code, the principal techniques used to solicit bids for Government procurements are "open," "selective," and "negotiated" tender. Under open tender, invitations to bid are publicized widely; under selective tender, invitations are limited to a few selected suppliers, and under negotiated tender, procurement is usually from a sole-source supplier. We were told by French Government officials that use of open tender bidding is virtually nonexistent. In the vast majority of cases, public offerings are under the selective tender.

Some procurement officials justified their selective bidding system as a means of stopping other members of the European Community from selling products in France at lower prices than in their own country. At the same time, they sometimes consider foreign bids as a means of keeping domestic prices low and competitive and as a gesture to encourage

trade within the European Community. It is apparent that French procurement officials do not rely upon free and open bidding in their purchasing policies, and if items are purchased from a foreign source, it is the result of a conscious decision to do so.

French Government officials and representatives of nationalized industry said foreign procurement was limited, and almost all of it was for products which were technically superior or were specifically requested by an operating unit. Further, all common-use items procured by his central procurement office were bought from local firms as a matter of preference.

According to representatives of the small electrical equipment section of l'Electricite' de France, unlike heavy electrical equipment, a world market does not exist for small electrical equipment. It is their opinion that differing technical standards among countries are the biggest hurdle to overcome in opening up trade for small electrical equipment. For this reason they said U.S. firms had not demonstrated any interest in marketing these products in France.

The primary factor which enables U.S. firms to compete in certain market areas is the technological advantage of its products. For example, corporate officials for a large computer firm told us that their company had been able to generate Government business only because the firm was a leader in computer technology. They commented that their company loses considerable business because of administrative preference given to French firms even though many of the U.S. firm's components are manufactured in that country.

The difficulties in selling to the French Government are compounded when a foreign firm attempts to deal through its sales representative. An official of a large import federation which represents about half of the importers located in France said that the Government would not purchase items from foreign firms if that product could be manufactured locally.

An official for a company which acts as an import representative for several American firms advised us that preference for French products exists to such a degree that the Government makes awards to local firms despite higher price and poorer product quality.

All business officials we interviewed commented that the French Government and nationalized industries favored local firms, and rarely, if ever, imported items which were available domestically. Some also felt considerable business potential was lost because of such favoritism.

## GERMANY

Procurement in Germany is done at three governmental levels--Federal, State, and local. The Ministry of Economics is responsible for establishing regulations to be applied uniformly to all Government procurement activities in Germany. Except for some minor preferences given to certain domestic groups, including refugees and firms located in West Berlin and border areas, such regulations are silent on the buy-national issue.

Actual procurement by the various agencies within the three governmental levels is very decentralized, and for this reason, procurement officials said they could not furnish us with overall procurement data. According to an official of the Ministry of Economics, about \$37.8 billion is spent annually for procurement, including defense, and \$12.6 billion, or about one-third, is procured at the Federal level. Publicly owned enterprises, such as the Federal railways, handle their own procurement.

The official policy position of the German Government is that they do not discriminate in favor of German firms. There are no written rules or regulations which favor domestic procurement, except in a number of limited areas. We were told that in actual practice there is a marked tendency on the part of procurement officials to favor German suppliers or, at least, multinationals with a German manufacturing subsidiary.

A German State procurement official said very little procurement goes to foreign firms. Preference is usually given to sources of supply in the following priority order:

1. State.
2. Germany.
3. European Community.
4. Other foreign sources.



The German States have some voice as to whether a bid will be published in a regional or national publication. Quite often the States prefer to stay within a regional (State) area. Representatives of the Ministry for Economics cited a case where a contract may have been awarded because a firm was within a particular region. The Cologne city government, for example, uses automobiles which are produced in that city. This tendency to protect regional and domestic labor through Government procurement policy becomes even stronger during an economic slowdown.

The Ministry of the Interior acts as a central purchasing agent of common-use items for the border, local, and State police. Since many divisions of the Ministry have authority to do their own purchasing, the annual budget of this central purchasing authority is only about \$67.2 million. Foreign procurement in any given year varies but seldom exceeds 20 percent of total expenditures. The higher levels of foreign purchases exist when products are not produced domestically; e.g. Bell Helicopters were purchased from the United States in 1974.

Procurement officials also pointed to practical reasons for favoring domestic firms. These include close personal contact with known suppliers and nearby sources of repair and maintenance.

The system for soliciting bids tends to limit foreign firms' opportunities to sell to the Government. The German Government uses three forms of bids--open, selective, and single tender. According to officials at the Ministry of Economics, open bidding is not frequently used. Selective bidding, the most frequently used process, uses a small selected number of firms which have demonstrated their expertise in producing the required product. The procurement office usually makes an offering to bid only to those firms that they are convinced can fulfill their requirements. Single tender may include emergency or sole-source purchases and is the second most prevalent form of bidding.

Opportunities for American and foreign businesses to sell to the German Government or to general contractors doing Government construction exist in high-technology areas but require a good understanding of the procurement system and usually at least a service facility in the country. For representatives of American businesses with whom we had discussions, this was usually accomplished by having German citizens or German-speaking residents responsible for this type

of selling. In addition, U.S. firms which were successful in selling to Government contractors items which could be manufactured by German firms usually had either a domestic manufacturing capability or an extensive distribution and service facility.

We had discussions with officials of two U.S. companies which have been successful in selling to the Government through a prime contractor. Both men responsible for these sales were native Germans with a good knowledge of the German procurement system. One company had a manufacturing capability for building control systems for air-conditioning equipment in Germany but imported 60 to 70 percent of the value of the components. The other did not manufacture its air-conditioning equipment and elevator components in Germany but imported them totally from the United States or from plants in Europe. It did, however, maintain an extensive distribution and service facility in Germany.

Approximate annual sales to Government contractors by the two companies in the above product lines are \$11 million. According to representatives of both firms, even though German firms have the domestic capability to produce comparable products, they do not experience any discrimination in their product line. They stressed, however, the necessity to be fully informed on future Government work and to maintain close personal contact with the various ministries. They were aware the Government favored domestic suppliers in procurement of computers and equipment for nuclear powerplants.

Government procurement policy becomes much more restrictive when the Government purchases directly, as opposed to purchasing through a general contractor. A representative of a trade association in West Germany commented that, as far as he was aware, no American companies had received direct German Government contracts for items which German firms could produce. He told us that not only is there discrimination against foreign firms, but based on continuing business relationships, some domestic firms are favored over others in Government procurement.

A representative for a U.S. manufacturer of large computers with a sales office in Germany believes Germany buys locally whenever practicable. However, his firm invariably gets most Government contracts for large-scale computers because of limited domestic competition. Another large U.S. computer manufacturer controls about 60 percent of the total market in Germany. To redress this imbalance in computer

technology, the German Government has recently approved a 5-year program authorizing research and development funds to make local German industry more competitive in this field.

U.S. firms with only a sales representative in Germany have not been successful in selling to the German Government items which can be produced in Germany. A German sales representative for 15 U.S. firms which specialize in manufacturing electromagnetic equipment said he bids on Government contracts which call for equipment that cannot be manufactured in Germany. He said that, whenever possible, a contract is given to a domestic firm even though the product might cost more and be of a lesser quality. These barriers to foreign procurement are usually informal in nature but at times involve product specifications peculiar to Germany.

### JAPAN

Japan has no central procurement agency. Each purchasing entity--ministry, public corporation, etc.--does its own procurement, and, according to Japanese officials, overall statistics are not maintained. In response to our request for available data, Government officials provided the following information on two ministries and two public corporations.

	Total procurement ( <u>note a</u> ) (millions)	Foreign <u>procurement</u> (percent)
Posts and telecommunications (note b)	\$ 78.2	0.9
Transport--Civil Aviation Bureau	28.5	<u>c</u> /30.0
Nippon Telephone and Telegraph (public corporation--domestic communications)	1,933.0	0.3
Kokusai Denshin and Denwa (public corporation--international communications)	37.1	0.5

a/12-month period ended March 31, 1974.

b/Does not include expenditures for services.

c/Because of unusual expenditures in fiscal year 1974--purchase of aircraft from the United States--the percentage is higher than usual. The annual average is about 10 percent.

According to Government representatives, no U.S. firms were even registered to sell to two of these entities, although registration is required.

A market research study pertaining to communications equipment disclosed that Government procurement is restricted to domestic sources unless equipment is unavailable. Perhaps in recognition of the difficulties in selling to the Government, trading companies representing U.S. firms in Japan are apparently not aggressively pursuing Government sales except when the U.S. product is a high-technology item or meets requirements not provided by competitive Japanese products.

In September 1972 the Government rescinded the Buy-Japan Cabinet Order of 1963 that favored domestic suppliers in 14 commodity groups. The only remaining formal preference for computers and related electronic data processing equipment was removed in December 1975. Despite these formal declarations of nondiscrimination, U.S. businesses and their representatives in Japan suggest that the rescission of the 1963 order has not altered the discriminatory procurement practices of the Government and its public corporations.

A U.S. Government-financed market research study on communications equipment based on information from 1971-73 shows that Japanese governmental organizations do not generally buy imported communications systems or purchase locally made systems incorporating imported components for commercial use within Japan. The report indicated that, aside from the policy of strengthening Japanese industry by buying domestic products, there is also the practical reason of maintaining a secure long-term, standardized supply. According to the report, constant contact with procurement officials, some of whom do not speak English, is necessary to sell to the Government. In this way a relationship develops over a number of years and guarantees the procurement official personal attention and prompt service. When dealing with foreign firms, this personal element is sometimes missing which, in the view of the Japanese, could lead to problems. This information was corroborated by U.S. firm representatives who commented that one of the reasons why procurement officials favored domestic suppliers over foreign suppliers was the language barrier and other possible difficulties with foreign suppliers.

The method of bid solicitation also works against foreign firms unfamiliar with the bidding system. A study prepared by the U.S. Embassy in 1974 showed that none of the 10 ministries surveyed used an open bidding system.

Of the 22 firms and 2 Japanese trading companies representing U.S. firms contacted, 11 had minimal or no success in selling items available from Japanese firms to the Government or its public corporations. Of the 11, 4 cited no interest in the Government market as the reason for lack of sales and 7 said that they had met with little success in selling to the Government because of the favoritism accorded Japanese firms.

A factor which enables U.S. firms to gain Government contracts is the technological advantages of their products. Of the 13 firms contacted that were successful in selling to the Japanese Government, 12 said their success was due to U.S. technological superiority or the lack of any comparable Japanese-produced product. For some high-technology items, U.S. firms compete with other U.S. firms or Japanese firms producing under license from a U.S. manufacturer. According to U.S. industry representatives, foreign firms generally must agree to license their technology to a Japanese firm before selling to the Japanese Government. In this way the Japanese Government is assured that the technology will be made available to Japanese industry which will then be capable of supplying the item in the future.

In response to our query on whether U.S. businesses which have been successful in selling to the Government are treated equal to Japanese-owned businesses in Government procurement, 9 of 13 U.S. companies replied that Japanese firms were given preferential treatment. Of the nine U.S. firms alleging preferential treatment to Japanese firms, four were wholly owned U.S. subsidiaries, four were firms belonging to joint ventures with Japanese companies, and one was a U.S. trading company dealing in imported products. All four U.S. companies replying that they were treated equally in Government procurements were minority or equal partners in joint ventures with large, highly successful Japanese firms. In the opinion of many of the U.S. business representatives we interviewed, teaming up with a strong Japanese firm had a great bearing on whether a company was successful in selling to the Japanese Government.

We were able to obtain only limited data on sales to the Government. The following amounts represent only rough estimates made by 10 U.S. firms on recent annual sales to Japanese governmental entities or local governments. The major industries represented and the estimated value of their sales were:

	<u>Amount</u>
	(millions)
Heating, air-conditioning instruments, and related electronics	\$ 50.0
Office equipment	60.0
Waste disposal	25.0
Aviation communications equipment	12.5
Defense-related items	4.1
Computers and related equipment	<u>13.7</u>
 Total	 <u>\$165.3</u>

Seven of these 10 firms selling to Japanese Government entities were either joint ventures or had minority U.S. interests. These seven firms accounted for \$150.5 million, or approximately 91 percent of the total. Of the remaining three firms, two were wholly owned U.S. subsidiaries, and sales were made because of advanced technology or domestic nonavailability.

The difficulty in selling to the Government is compounded if a physical presence is not maintained in Japan, a factor making it virtually impossible to sell to the Government unless the product is unique or not produced in Japan. A representative of a U.S. subsidiary told us that the telecommunications area (microwave equipment, telephonic systems, and electronic parts, etc.) is completely closed to imports regardless of quality or price.

Both trade associations and the Government impose their own standards, and in many cases it would cost the foreign firms a great deal to redesign their products to conform to those standards. One representative commented that the Government would not accept pharmaceutical research done in the United States, but the United States would accept such research done in Japan.

All three trading companies representing U.S.-based firms felt that the Government favored domestic products. They, therefore, concentrated their efforts in high-technology products or items which were not available in Japan.

## CHAPTER 6

### APPLICATION OF THE BUY AMERICAN ACT

#### AND THE SPECIALTY METALS PROVISION

##### BUY AMERICAN ACT

The Buy American Act (41 U.S.C. 10a-10d) requires generally that any Federal agency, acquiring materials for public use within the United States, purchase only domestic products, if present in sufficient and reasonably available commercial quantities. However, an agency head may acquire foreign products if he determines either that (1) the cost of the domestic product is unreasonable or (2) acquisition of the domestic product is inconsistent with the public interest. Additionally, under construction contracts, the head of the procuring agency may determine, for a particular item, that it is "impracticable" to impose Buy American Act provisions, an exception which must be noted in the contract specifications.

##### Unreasonable cost

Neither the statute itself nor its legislative history provides an exact definition of "unreasonable cost," "impracticable," or "inconsistent with the public interest." A Comptroller General decision noted with respect to unreasonable cost, that the reasonableness of domestic bid prices was to be determined by comparison with foreign bid prices, as well as domestic costs and profits (39 Comp. Gen. 309 (1959)).

It has been the practice of the executive branch to define unreasonable cost in terms of a differential applied to imported products for cost comparison with U.S. products.

In 1934 the Treasury Department, implementing the Buy American Act, determined that domestic cost would be unreasonable if it exceeded import cost by 25 percent or more. The 25-percent differential was applied generally by all Federal agencies until 1951 but later was sometimes disregarded by certain agencies.

In 1954, acting upon the recommendation of a study that foreign bids be treated much the same as domestic bids, the President issued Executive Order 10582 to make the Buy American Act's application uniform within the executive branch. Under the order,

"\* \* \* the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in [the Executive order]." (Underscoring added.)

An agency head who wishes to purchase domestic articles and who determines that a greater differential than that provided in the order is not unreasonable or that the domestic purchase is not inconsistent with the public interest may disregard the Executive order and impose the greater differential.

Implementing regulations provide that the differential shall be either (1) 6 percent of the bid or (2) 12 percent of the bid, if the low domestic bidder is a small business or is in a labor-surplus area.

According to a 1968 Comptroller General Decision (48 Comp. Gen. 403), the Executive order presumes that a domestic bid which is more than 6 percent above the foreign bid is unreasonable and is inconsistent with public interest. This presumption may be overcome, however, by a determination of the agency head to the contrary. Moreover, the order does not, on its face, prohibit an agency from awarding a contract to the foreign bidder when the differential is 6 percent or less (the order merely states that a differential is deemed unreasonable if it exceeds 6 percent), and nothing in the order indicates that the agency head's discretion under statutory law to determine what is reasonable and in the public interest has been eliminated. Rather, up to and including a differential of 6 percent, a domestic product's cost is presumed to be reasonable and consistent with the public interest. Above the 6-percent differential, the burden shifts, and a domestic product's cost is presumed to be unreasonable and inconsistent with the public interest, in the absence of a finding to the contrary.

In view of the U.S. balance-of-payments problem, the Department of Defense has issued regulations (ASPR 6-102.2, 6-104.4) imposing a 50-percent differential, exclusive of import duties, whenever this is more beneficial to the domestic bidder.



Of course the President has the option to redetermine what is unreasonable and, by new Executive order, may modify the differential established by Executive Order 10582. In light of the clear intent of the Buy American Act to give preference to bids for domestic goods, eliminating this preference for all procurement could not be accomplished without repealing the act. However, agencies have from time to time determined that it would be inconsistent with the public interest to apply the Buy American Act to certain contracts and have indicated this intent in the invitation for bids, a practice we have upheld in appropriate circumstances. (B-151898, Aug. 22, 1963; 51 Comp. Gen. 195 (1971)).

The section of a report concerning the Buy American Act by a Study Group of the Commission on Government Procurement in 1971 concluded that price differentials should be the same for all Government agencies. We believe it desirable when applying the price differentials to recognize a preference for U.S. sources and, contingent on reciprocal actions by our trading partners, to encourage a competitive domestic base.

DOD's justification in 1964 for raising the differential to 50 percent was to improve the then unfavorable U.S. balance-of-payments position and not to provide additional protection for domestic industry. We believe that, because of the negligible impact of the Buy American Act on the balance of payments and the improvement in the U.S. balance-of-trade position, due in part to the devaluation of the dollar and the relatively lower U.S. rate of inflation, a 50-percent differential to improve the balance of payments is no longer justified.

Our analysis in chapter 3 shows that such a small portion of DOD procurement is subject to foreign competition on a price basis that any effect from lowering the 50-percent price differential to the 6- and 12-percent levels used by the civilian agencies would be minimal. Most of DOD's procurement is protected from foreign competition by national security considerations and other legislative restrictions, as well as practical constraints.

#### Transaction threshold

Procurement officials we contacted viewed as practical a December 1972 recommendation of the Commission on Government Procurement that purchases of less than \$10,000 be excluded from the Buy American Act. The act applies now to

all procurements regardless of dollar amount. They noted that foreign purchases below this amount were minimal.

An interagency task force chaired by an official from the Department of Labor suggested in a June 1975 report on the Commission's recommendations that the transaction ceiling relating to the Buy American Act, balance-of-payments program, and use of excess and near excess currency should be raised to \$10,000. The report noted that extensive fieldwork by a study group of the Commission on Government Procurement, a search of Comptroller General decisions on Buy American issues, and information furnished by two GSA divisions which procure foreign products indicate that foreign bidders have had little interest in U.S. procurement under \$10,000. We find these views agree with comments made by procurement officials during our review.

For the balance-of-payments program, both ASPR and FPR require cost estimates only when domestic costs are expected to exceed \$10,000 and would not be affected by the proposed \$10,000 exemption. The \$10,000 exclusion would apply to use of excess U.S.-owned foreign currency for Government procurement for use outside the United States.

#### U.S. manufacture

The Buy American Act requires that the U.S. Government procure only those manufactured goods which (1) are "substantially all" from materials produced in the United States and (2) are "manufactured" in the United States. The act, however, fails to define either substantially all or manufacture.

By Executive Order 10582, substantially all has been interpreted to mean that the cost of the domestic components exceeds 50 percent of the cost of all components. Cost is limited to cost of materials and does not include such items as profit, overhead expenses, and transportation of the end product to place of delivery or installation (35 Comp. Gen. 7 (1955)). However, import duties on the foreign components and freight costs from the foreign country to the place of U.S. assembly are included in the cost of materials (43 Comp. Gen. 306, 308 (1963), rev'd on other grounds, 46 id. 784 (1967)).

It has been much more difficult to determine what constitutes manufacture within the United States, and despite the number of years the Buy American Act has existed, no

precise definition has been formulated. The policy has been to determine what constitutes manufacture on a case-by-case basis (46 Comp. Gen. 813, 818 (1967); 39 id. 435, 438 (1959)). In 1966 we held that foreign-manufactured steel ingot, heated and rolled into billets and made into steel bars, underwent "substantial changes in physical character" and constituted two manufacturing processes in the United States satisfying the requirements of the Buy American Act (45 Comp. Gen. 658 (1966)). However, packaging, testing, and evaluation processes have been held not to qualify as manufacture (46 id. 784 (1967); 48 id. 727 (1969)).

Despite the vagueness of the term, U.S. manufacture must be shown for a bidder to receive award. Thus, softballs made entirely from materials produced in the United States but assembled in Haiti, where Haitians sewed U.S.-produced softball covers to U.S.-produced core materials using U.S.-produced needles and thread, were considered foreign end products since the softballs were not manufactured in the United States. This is so even though the services performed in Haiti constituted less than 3 percent of the product's cost (52 Comp. Gen. 13 (1972), affirmed by B-175526, May 23, 1973). On the other hand, work in the Virgin Islands on watch movements constituted U.S. manufacture, although some of the movement assembly had been previously done abroad (B-179939, June 6, 1974).

#### End product or component

Another difficulty in administering the act is the determination of what constitutes an end product and what constitutes a component. Components may consist of more than 50 percent of foreign materials and be manufactured abroad, but end products, to be classified as U.S. products, must be composed of material of which less than 50 percent of their costs is of foreign origin and be of U.S. manufacture. The classification of a unit as end product or component may be crucial, and such classifications have not been without problems.

For example, in 1966 a contract appeals board held in a procurement for pump and motor units that the motors (of foreign materials and of foreign manufacture) constituted foreign end products (Klefstad Eng. Co., 66-2 BCA 5987). We subsequently held that, since what was intended to be procured was a complete circulating water pump unit, with motor mounted on the same base with the pump and shafts

aligned and coupled, the motor was but a component to what was really the intended end product--an integrated pump motor unit (46 Comp. Gen. 813 (1967)).

We determined in another case (53 Comp. Gen. 726 (1974)) that mechanics tool kits with cases were the end product and not the individual tools, noting they did

"not regard the tool case and tools as items of mere packaging, as in the nature of a bottle, but as integral units of the kit without which the tool would not fulfill its intended and practical purpose."

In an earlier case, however (51 Comp. Gen. 323, 328 (1971)), involving the procurement of repair kits for a power generator, we felt it "questionable" that the assembly of the tools into a kit was a manufacture within the United States and, thus, believed that the individual tools in the kit might each be end products which would require each tool to be of U.S. material and manufacture.

### Construction contracts

The act treats procurement of construction contracts for public buildings or works somewhat differently than it treats supply contracts. Construction material (under FPR §1-18.601(b) and ASPR §18-506.2), includes any material "brought to the construction site for incorporation in the building or work." The regulations provide that only domestic construction material be used in the construction. This means that a contractor cannot bring raw material of foreign origin to a construction site for assembly into an item to be incorporated into the public building or work, but the contractor can bring a preassembled item, having incorporated the foreign raw material into the item at some previous time.

Thus, we held that English-made pipefittings should not have been brought to a public building construction site but intimated that, had the pipefittings been assembled into an operable drainage system of U.S. origin and brought to the construction site, no such objection would have arisen (B-162950, Dec. 18, 1967).

The Buy American Act, by its own terms, applies to procuring supplies for use in the United States, which is defined to include "the United States and any place subject to the jurisdiction thereof." However, the applicability of the Buy American Act to construction contracts

is limited to "the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands" (41 U.S.C. §10c). Thus, a supply contract for Guam would be subject to the act but a construction contract would not.

### Nonapplicability of the Buy American Act

The Buy American Act is applicable to public works and to materials and supplies intended for public use. Since procurement by State or local authorities pursuant to Federal grants does not involve public works or purchases of materials for use by the United States they are not subject to the act. An exception to this requirement is made when a statute authorizing Federal assistance to local authorities provides for application of the Buy American Act--the United States Housing Act of 1937, as amended (42 U.S.C. 1401, 1406). Subsequent Federal Housing Acts contain no domestic-source preferences. Some acts specifically impose their own Buy American-type requirements--the Rural Electrification Act of 1938 (7 U.S.C. 903 note ). (See B-184109, July 11, 1975.)

The Buy American Act does not apply to contracts for public works outside the United States. Thus, contracts to be performed at a U.S. base in Okinawa are not subject to the Buy American Act (B-165293, Jan. 30, 1975).

The Department of Defense has determined that it is not in the public interest to apply the Buy American Act to certain Canadian end products. We did not object to this waiver (B-151898, Aug. 22, 1963; 54 Comp. Gen. 44 (1974)).

### Relation to Trade Act of 1974

Section 102 of the Trade Act of 1974 (Public Law 93-618) urges the President to harmonize, reduce, or eliminate nontariff barriers whenever he determines such barriers to unduly burden or restrict U.S. foreign trade or adversely affect the U.S. economy. Nontariff barriers are those restrictions, other than duties, which hinder the free movement of commodities between nations. Although not a restriction placed upon the entry of imports, the Buy American Act does place goods of foreign origin at a competitive disadvantage and is recognized as a nontariff barrier. The act, however, provides that it is not to be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers and other distortions of international trade.

Thus, without action by the Congress to modify or repeal the Buy American Act, it would not be affected by section 102 of the Trade Act of 1974.

### Observations on the Buy American Act

The consensus among procurement officials is that administering the Buy American Act is not difficult, and only incidental costs are involved. This may be because the provisions are implemented through a standard contractual clause which requires only a supplier's certification that only U.S.-source items will be used. Monitoring features are available and include the inspection of commodities and the resolution of protests alleging unauthorized use of non-domestic items.

A confluence of definitions and differentials, the legal problems of the Buy American Act are more complex than is justified by the small number of Federal procurements that involve both domestic and foreign competition. When passed in 1933 in the wake of the depression, the Buy American Act was intended to help stimulate the U.S. economy and encourage U.S. employment. Under a system which permits 49 percent of the cost of the components of any end product to be foreign made and where U.S. manufacture may represent only a tiny fraction of the item's overall cost, it is at least questionable to what degree the domestic labor market and the economy are being aided by the Buy American program.

The Buy American program however, could be strengthened by defining more precisely what constitutes U.S. manufacture under the act and by amending the law to permit evaluation of selected procurements for the extent of their foreign componentry and labor.

Recognizing that the Buy American Act affects only a small fraction of U.S. Federal procurement, it would be difficult to conclude that such revisions would appreciably improve the U.S. economy or greatly reduce unemployment. Revision, however, would make application of the Buy American Act more consistent.

A study group of the Commission on Government Procurement recommended in 1971 that Executive Order 10582 be revised (1) to define "substantially all" to permit procuring agencies the flexibility to specify the componentry percentages for different classes of items or to prohibit the incorporation of critical components of foreign origin and (2) to

provide that, for high-value procurements, the invitation for bids require disclosure of the percentage and dollar value of components of foreign origin, as well as an evaluating differential to be applied against the value of the foreign components.

These recommendations were not adopted by the full Commission, which noted that the recommendations were controversial as to their effect and involved major policy considerations requiring congressional attention.

We believe that permitting Federal agencies to periodically adjust component percentages would inject an additional measure of uncertainty into the Buy American program requiring bidders to attempt to outguess Federal agencies in determining today's component percentages and would encourage suppliers to seek business in private sectors where the results would be more predictable.

Moreover, the administrative burden of accounting for the percentage of components in bid evaluation might outweigh the benefits in all but the most major procurements. Including an evaluating differential based upon foreign component costs may increase contractual disputes requiring costly auditing efforts to resolve.

We are also struck by the arbitrary limit that would be inherent in accepting the recommendations. A 30-percent restriction is not necessarily better than a 50-percent restriction, and the low bidder whose foreign component costs are 30.01 percent would be no less disturbed when he is eliminated from a procurement when the successful bidder's foreign component costs were 29.99 percent. Similarly, imposing an evaluation differential on procurements in excess of \$200,000 would not solve the nearly identical problem of foreign component costs in procurements of \$195,000.

As the act encourages stimulating the U.S. economy and promoting U.S. employment, it would be desirable to obtain better information for understanding the impact of the component requirements for high-value transactions. Such information would provide insight as to whether or not the application of the component requirements, as they are presently defined, support the intent of the legislation. If needed, procedures for evaluating bids may be modified to provide a penalty that would relate to the value of foreign components. As an alternative, if this would unduly complicate the application of the Buy American Act, the

percentage of the componency requirement could be modified to better reflect the act's intent to help stimulate the U.S. economy and encourage U.S. employment. We believe that information as to whether any change is needed may be obtained on a sampling basis from bidders.

### Recommendations

We recommend that the Director, Office of Management and Budget, and the Administrator, Office of Federal Procurement Policy, in coordination with concerned agencies:

- Recommend amendment of the Executive order implementing the Buy American Act to define "manufactured in the United States."
- Require, on a sampling basis, that Federal agencies request bidders in high-value procurements to disclose in their bids the percentage, the dollar value, and the nature of components of foreign origin delivered to the point of assembly of the finished products. It should be clearly stated that disclosure is sought for information purposes and, barring foreign componency costs in excess of 50 percent of all components, will not be a factor in contract evaluation. The information will be useful both to the concerned agencies and to the Congress in evaluating the extent the price differentials should apply to foreign components in domestic procurements.
- Establish the same price differentials under the Buy American Act for both civilian and military agencies. Such price differentials should be periodically reviewed to both recognize a preference for U.S. sources and, contingent on reciprocal actions by our trading partners, to encourage domestic competition.
- Consider for inclusion in legislative proposals to the Congress raising to \$10,000 the minimum for procurement transactions that would be subject to requirements under the Buy American Act.

These offices agreed with these recommendations. The comments of these offices and the seven other agencies which reviewed the report are contained in appendixes IV through XII.



## SPECIALTY METALS PROVISION

It is not clear whether the addition in 1972 of the specialty metals provision to the DOD fiscal year 1973 Appropriations Act has resulted in increased DOD procurement of specialty metals from domestic sources. DOD uses only a small percentage of the industry's output--estimated by DOD at less than 4 percent. DOD asserts that most of the high-technology specialty metals used in weapons systems before 1972 were procured from domestic sources, and it is likely that this practice would have continued without enactment of the specialty metals provision. Industry officials contend that expensive research and development required for high-technology specialty metals for military purposes is dependent on income derived from high-volume products.

Section 724 of the act amended a longstanding provision restricting the procurement of foodstuffs and textiles to domestic sources by adding specialty metals to the same restriction. The restriction requires that any specialty metals (stainless steel, tool steel, and several other metals) to be incorporated in defense items to be melted in domestic plants. Several exceptions to the specialty metals restriction follow:

- Domestic nonavailability.
- Procurements outside the United States in support of combat operations.
- Procurements by vessels in foreign waters.
- Emergency procurements.
- Procurements not in excess of \$2,500.
- Procurements below prime contract level in programs other than aircraft, missiles and space systems, ships, tanks--automotive, weapons, and ammunition.

Representatives of the specialty metal producers commented that the specialty metals provisions in the DOD Appropriations Act has eliminated competition from Canadian firms and insured that contractors working on defense projects use U.S.-source specialty metals. Under the Buy American Act definition of an "end product," specialty metals are considered as components when incorporated in military

items being procured (aircraft, missiles, ships, tanks, and ammunition). If the total, foreign-source specialty metals components composed less than 50 percent of the cost of the end product, there was no restriction as to their use. The Buy American Act did not afford the industry any protection from foreign sources.

Section 814a of Public Law 94-106, enacted October 7, 1975, directs DOD to further efforts to insure that equipment, procedures, ammunition, fuel, and other military items be standardized or made interoperable, to the maximum extent feasible, with that of other members of the North Atlantic Treaty Organization. This effort, plus the increasing costs of weapon systems, has resulted in DOD making several co-production and offset agreements with our NATO allies. Such agreements may provide for coproduction of U.S.-designed military systems at foreign locations and/or DOD commitments to procure, on a price competitive basis, a certain percentage of components for a weapons system from countries purchasing U.S. weapon systems.

DOD believes that the provision has increased the problems associated with establishing coproduction and offset agreements, such as those arranged for the sale of the F-16 aircraft. These arrangements are associated with U.S. efforts to standardize weapon systems with the NATO countries and to further sales of U.S.-designed systems to these countries. DOD has further considered the specialty metals provision and is seeking statutory relief.

On July 16, 1975, the United States International Trade Commission received a petition filed by the Tool and Stainless Steel Industry Committee for Import Relief and the United Steel Workers of America, requesting an investigation under section 201 of the Trade Act of 1974 on imports of stainless steel and alloy tool steel. In January 1976 the Commission found each of the following conditions.

- There are increased imports (either actual or relative to domestic production) of an article into the United States.
- A domestic industry producing an article like, or directly competitive with, the imported article is seriously injured or threatened with serious injury.

--Such increased imports of an article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Most of the affected imports come from Japan, Canada, France, Sweden, and England. The Commission recommended to the President that import quotas for a 5-year period be established by product and country.

Based upon the Commission's findings that imports were a major cause of serious injury to the domestic industry, an agreement was signed on June 11, 1976, by the United States and Japan limiting U.S. imports of specialty steel from Japan.

Japan has accounted for more than 50 percent of recent U.S. imports of specialty steel. This orderly marketing agreement calls for U.S. imports of these products from Japan to be limited to 66,400 short tons for the 12-month period from June 14, 1976, to June 13, 1977, with 3-percent annual increases in each of the 2 subsequent years. Japan supplied 78,500 tons in 1975 and 30,999 tons in the first 4 months of 1976.

Also, effective June 14, the United States proclaimed 3-year restraints on U.S. imports of specialty steel from other foreign countries. These quotas are generally to be applied to supplier countries on the basis of their proportionate import shares of the U.S. market over the 5-year period 1971-75 and will cover five product categories: stainless steel sheet and strip, plate, bar, rod, and alloy tool steel.

The quota for the period June 14, 1976, to June 13, 1977, is 147,000 short tons. For the 1977-78 period, the total quota is 151,500 tons, and for 1978-79, 155,900 tons.

Since the majority of the industry's production is for commercial use, the proposed action by the President to reduce foreign imports of selected specialty metals on either a mandatory or voluntary basis appears to offer the specialty metals industries greater benefits than does the Appropriations Act restrictions.

## RECOMMENDATION TO THE CONGRESS

The Congress should review with the Department of Defense (1) whether the specialty metals provision in the Defense Appropriation Act has had any major impact in increasing Government procurement of domestic specialty metals and (2) the consequences of this provision on efforts to arrange NATO standardization agreements, particularly as it affects sales of U.S.-designed military weapon systems.

LISTING OF SELECTED LEGISLATIVE-BASED RESTRICTIONSHAVING THE GREATEST IMPACT ON FISCAL YEAR 1974U.S. GOVERNMENTAL PROCUREMENTS1. National security

Executive Order 11490, dated October 28, 1969, states that Federal departments and agencies establish procedures for national emergency preparedness. This order authorizes the agencies and departments to maintain an adequate mobilization production base for essential products which complement the military readiness planning responsibilities of DOD.

2. DOD purchase of food, clothing, and specialty metals

Section 723 of the 1976 DOD Appropriations Act, Public Law 94-212, prohibits DOD from procuring food, clothing, specialty metals, and certain fabrics not grown or produced in the United States, with several narrow exceptions.

3. DOD shipbuilding

Title IV, Procurement, Shipbuilding and Conversion, Navy, of the DOD Appropriations Act, Public Law 94-212, states that none of the funds provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel. Provided further that none of the funds shall be used for the construction of any naval vessel in foreign shipyards.

4. Buy American Act

Title 41 U.S.C., 10a-d, requires generally that materials being purchased for public use by Federal agencies be purchased only from domestic sources, if materials are present in sufficient and reasonable quantities. Foreign-source items, however, may be acquired if it is determined that the prices of the domestic items are unreasonable. Executive Order 10582 defines procedures to use in determining an unreasonable cost of domestic products.

5. Balance-of-payments program (offshore purchases)

Applying to the procurement of supplies or services (not construction) for use outside the United States (the Buy

American Act applies within the United States) regulations (41 C.F.R. 1-6.8; ASPR, Sec. 6 pt. 8) required that only U.S. end products or services be contracted for, with certain exceptions. One exception, applying to procurements where the domestic cost exceeds \$10,000, provides that where the domestic bid exceeds the sum of the foreign bid, plus a 50-percent differential, the head of the agency may, but is not required to, accept the foreign bid.

#### 6. Military assistance program procurement

Under 22 U.S.C. 2354, procurements for military assistance generally are restricted to domestic concerns and U.S. end products, unless the President determines a foreign procurement will not result in adverse effects upon the U.S. economy or the industrial mobilization base.

#### 7. Construction of diplomatic and consular establishment (offshore purchases)

Under 22 U.S.C. 295a, a preference is established for domestic manufacturers in construction of diplomatic and consular establishments.

#### 8. GSA purchase of handtools

Since 1970 section 505 of GSA Appropriations Act, Public Law 44-91, has increased the protection level for these products by increasing the price differentials in the Buy American Act. Bids offering these domestic-source end products will be evaluated against bids offering foreign-source end products by adding a factor of 50 percent to the latter, exclusive of import duties.

#### 9. Flagship restrictions

Under 10 U.S.C. §2631 only U.S. flagships may transport supplies by sea for DOD, unless the President finds that the freight charged by those vessels is "excessive or otherwise unreasonable." Moreover, 46 U.S.C. §1241 requires that U.S. flagships be used to carry any U.S. officer or employee and personal effects "unless necessity of his mission requires the use of a ship under a foreign flag."

Other statutory restrictions requiring the use of U.S. flagships are found at 46 U.S.C. §§292 and 882.

10. Supplies from Communist countries

Under ASPR 6-401, supplies originating in Communist areas may not be acquired for public use, except in unusual situations.

11. Rhodesian supplies

Under ASPR 6-401, supplies (except chrome) originating from sources within Rhodesia shall not be acquired for public use, except in unusual situations.

12. DOD purchase of buses

Section 404 of the 1969 Armed Forces Appropriation Authorization Act, Public Law 90-500, prohibits the use of appropriated funds to purchase, lease, rent, or otherwise acquire buses not manufactured in the United States, with certain narrow exceptions.

13. U.S. Forest Service purchases

The U.S. Forest Service, under 16 U.S.C. 560a is restricted from purchasing twine manufactured from materials of foreign origin.

GEOGRAPHIC EXEMPTIONS OF THE BUY AMERICAN ACT

DOD determined it to be inconsistent with the public interest to apply the restrictions of the Buy American Act to articles, materials, or supplies mined, produced, or manufactured in Panama, Canada, or the U.S. possessions.

The rationale for DOD's determination to exclude Canadian products from the Buy American Act is explained in section 6-501 of ASPR which reads as follows:

"Because of the close geographical proximity of the United States and Canada and of the mutual interest of both nations in the defense of North America, various steps have been taken \* \* \* to coordinate their economic efforts in the common defense \* \* \*."

It is DOD policy to achieve greater degrees of standardization and integration of military equipment and greater flows of defense supplies between the countries and to establish supplemental sources of supply. To achieve these purposes, it was felt that the exclusion of the restrictions of the Buy American Act to Canadian products was essential. DOD purchases from Canada for fiscal year 1974 amounted to \$143 million.

Also, as stated in section 6-103.6 of ASPR:

"In accordance with the Memorandum of Understandings ancillary to the Treaty with the Republic of Panama signed 25 January 1955, the Secretaries have determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to articles, materials, or supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone."

Purchases of articles manufactured in Panama amounted to about \$1.2 million.

Commodities purchased from Puerto Rico and the Virgin Islands and also exempt from the Buy American Act amounted to \$63.9 and \$134.5 million, respectively.

Even though these countries or territories were excluded from the restrictive practices of the Buy American Act, other policy and/or practical barriers restricted



ompetition. Of the \$343 million purchased from these areas, for example, about \$146 million was for petroleum-based products, such as fuels, for which the United States is a net importer, and an additional \$50 million was for either services or construction projects.

ANALYSIS OF PROCUREMENT DATA OBTAINED FROM SIX U.S. AGENCIES

FISCAL YEAR 1974

	<u>DOD</u>	<u>TVA</u>	<u>Trans- portation</u>	<u>Interior</u>	<u>NASA</u>	<u>ERDA</u>	<u>Total</u>
--	------------	------------	-----------------------------	-----------------	-------------	-------------	--------------

Total agency procurement (note a) \$37,017 \$ 988 \$504 \$790 \$1,971 \$3,391 \$ 44,661

Procurement where competition was restricted exclusively to either domestic or foreign sources

36,267 468 482 618 1,743 3,214 42,792

Procurement initially identified as being subject to both domestic and foreign competition

750 520 22 172 228 17 1,869

Additional procurement identified as being restricted to exclusively domestic or exclusively foreign sources for practical reasons--projected estimate based on review of sampled procurement actions

344 169 10 5 (b) (b) 528

Estimate of procurement subject to both domestic and foreign competition

406 351 12 167 228 177 1,341

Percent of total agency procurement

1 35.5 2.4 21.3 11.5 5.2 3

Amount  
Percentage of  
total procurement

(billions)

a/Agencies included in our analysis \$49.8 89.6

All other agencies 5.8 10.4

Total procurement \$55.6 100.0

We selected agencies to insure that we accounted for most of the governmental procurements, those agencies most subject to foreign competition, and those with management information systems that best facilitated our analyses.

b/Not sampled.



**ASSISTANT SECRETARY OF DEFENSE**  
**WASHINGTON, D.C. 20301**

**INSTALLATIONS AND LOGISTICS**

23 JUN 1976

Mr. J. K. Fasick  
Director, International  
Division  
General Accounting Office  
441 "G" Street, N.W.  
Washington, D.C. 20548

Dear Mr. Fasick:

This is to acknowledge on behalf of the Secretary of Defense receipt of your draft report to the Congress titled, "Buy-National Preferences Limit Most Governmental Procurement to Available Domestic Sources -- United States, Great Britain, France, Germany and Japan", (OSD Case #4379) dated 28 May 1976.

We believe the report to be very timely and expect that it will be of great benefit to Department of Defense personnel engaged in procurement policy related to foreign sources of supply.

Sincerely,

**JOHN J. BENNETT**  
Principal Deputy Assistant Secretary of Defense  
(Installations and Logistics)



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT POLICY

JUN 25 1976

Mr. Richard W. Gutmann  
Director, Procurement and  
Systems Acquisition Division  
General Accounting Office  
Washington, D.C. 20548

Dear Mr. Gutmann:

This is in response to your letter of June 1, 1976, in which you asked for Office of Federal Procurement Policy (OFPP) comments on your draft report to the Congress entitled "Buy-National Preferences Limit Most Governmental Procurement to Available Domestic Sources -- United States, Great Britain, France, Germany and Japan."

In general, the report appears to be a comprehensive portrayal of current buy-national preferences and of their effect on international procurement. However, we offer the following suggestions in the interest of clarity and factual accuracy:

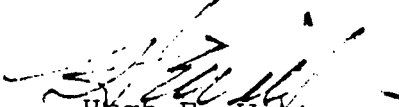
- 1) On p. iv of the Digest, in the last full paragraph, the statement is made that "The provisions are administered through a standard contractual clause which requires that a supplier certify that only U.S.-source items will be used." This could be misleading. The Buy American clause requires that the contractor deliver only domestic source end products. Such end products may, of course, contain many foreign items under the 50% cost of components rule.
- 2) On p. 2, you state that "Agencies such as NASA, ERDA and TVA are exempt from either DOD or GSA procurement regulations...." ERDA is not exempt from the Federal Procurement Regulations (FPR) and has issued its own implementation of the FPR as Chapter 9, Title 41, of the Code of Federal Regulations. The NASA Procurement Regulation closely parallels the ASPR.

- 3) P. 24, in the last paragraph "...special assistance from educational institutions...." was perhaps meant to be "special assistance to..." The same phrase appears again in the first paragraph on p. 25.
- 4) On p. 83, in the middle paragraph, the word "although" in the last sentence should be changed to "where."
- 5) Recommendation 2 on p. 86 suggests a disclosure of the percentage, dollar value and nature of components of foreign origin, and states that this information would be useful in evaluating the extent that price differential should apply to foreign components in domestic procurements. This Office would not object to acquiring such information, on a sampling basis, but is opposed to the application of price differentials to foreign components. OFPP's position is that the purposes of the Buy American Act are adequately served by the requirement to deliver domestic source end products. Extending the price differential evaluations to subcontracted items would vastly complicate the application of the Buy American Act, and would unnecessarily involve the Government in the contractor's business and limit the contractor's flexibility in selecting his suppliers.

Many of the GAO recommendations parallel those made by the Commission on Government Procurement. We do support the elimination of the 50% price differential, a better definition of "manufactured in the U.S.", making ASPR and FPR uniform in their treatment of procurement practices and a threshold of \$10,000 for application of the Buy American Act.

Thank you for the opportunity to review the draft report to the Congress on this significant aspect of procurement.

Sincerely,

  
Hugh E. Witt  
Administrator

GAO note: Page references in this appendix refer to the draft report and not the final report.



DEPARTMENT OF STATE

Washington, D.C. 20520

June 28, 1976

Mr. J. K. Fasick  
Director  
International Division  
U.S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Fasick:

I am replying to your letter of June 1, which forwarded copies of the draft report: "Buy-National Preferences Limit Most Governmental Procurement To Available Domestic Sources -- United States, Great Britain, France, Germany, Japan."

The enclosed comments were prepared by the Acting Deputy Assistant Secretary for the Bureau of Economic and Business Affairs.

We appreciate having had the opportunity to review and comments upon the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

A handwritten signature in cursive script that reads "Daniel L. Williamson".

Daniel L. Williamson  
Deputy Assistant Secretary  
for Budget and Finance

Enclosure: As stated.

GAO DRAFT REPORT: "BUY-NATIONAL PREFERENCES  
LIMIT MOST GOVERNMENTAL PROCUREMENT TO  
AVAILABLE DOMESTIC SOURCES - UNITED STATES,  
GREAT BRITAIN, FRANCE, GERMANY, JAPAN

1. The draft report to the Congress has been reviewed with great interest by the Department of State. The report represents an excellent overview of the problems generated by buy-national preferences, and certain problems inherent in the development of a code on government procurement. The highlighted differences between the U.S. approach to buy-national preferences and those of other major trading nations is especially useful.

2. In this regard, it would be helpful to clearly differentiate throughout the report between the U.S. system and those of other countries. Thus on page (i) (Digest) and page 1, while noting that the U.S. and the other countries which were studied limit government procurement to domestic sources, the observation on page 5 that foreign governments have been more successful than the U.S. in foreclosing foreign competition should be incorporated in order to avoid a misinterpretation that the systems are similar and somehow equal in effectiveness.

3. The draft report alludes to the ongoing efforts to achieve a code on government procurement, the purpose of which is to open such procurement to greater international competition. There is no analysis, however, of the negotiations or an explanation of recent events which reflects some positive movement in the negotiating exercise. Those portions of the report which conclude that such negotiations will not be fruitful appear to be based only on the present existence of extensive buy-national preferences and should either be deleted or be redrafted after updated information is obtained (pages ii (Digest), 6, and 9.)

4. In place of the first sentence of the last paragraph on page 2, it is suggested that the following sentence be substituted: "The Department of State advises in the formulation and execution of foreign policy and is concerned with all matters relating to international trade". An explanation of the Interagency Committee on Government Procurement and its activities may also be in order in this paragraph.

5. To clarify the expected coverage of a government procurement code, a sentence along the lines of the following should be added to the end of the last paragraph on page 8: "A government procurement code is not expected to cover weapons systems, or items of strictly military hardware.

6. To more fully reflect developments within the European Communities, it is suggested that the first sentence of the last paragraph on page 9 be deleted and the first sentence of the first full paragraph on page 10 be amended by adding to the end: "and may be adopted soon".

7. It is suggested that the following sentence be added to the end of the first full paragraph on page 13: "However, this may change due to increased pressure on the OECD Trade Committee to exert the maximum effort possible to finalize negotiations before deliberations begin in the MTN." This information more accurately reflects the current status of negotiations.

8. Consideration should be given to the possibility of extending the section entitled "Matters for Consideration by the Congress." Elsewhere in the report it is observed that U.S. buy-national preferences are not the primary barrier to purchasing from foreign sources (see page 14) and, in the converse, it can be fairly concluded that these preferences are not, in and of themselves, primarily responsible for the emphasis on domestic purchases. Thus, the report could suggest that if a code is negotiated which meets the elements listed, Congress should be prepared to consider the elimination of buy-American legislation. Irrespective of the outcome of code negotiations, consideration should be given to the inclusion of this recommendation given the lack of need for such legislation, especially in light of the present balance of payments and balance of trade situation.

9. Chapter 5 of the report analyzes the buy-national preferences of Great Britain, France, Germany and Japan and an attempt is made to measure any foreign procurement which is conducted by these countries. The conclusion is that such procurement is generally rare, and almost always for special reasons such as technological superiority. In analyzing U.S. foreign procurement in chapter 3, however, it appears that a much stricter standard has been used, that is, what proportion of U.S. procurement is subject to domestic and foreign competition. It would be helpful to compare how much was actually expended by the U.S. in procuring from foreign sources in 1974 and how much more could be so expended with a relaxation of various restrictions, regardless of the competitive nature of such procurement.


10. In chapter 6, the report analyzes the Buy American Act and interpretations thereof. New interpretations are in the process of being developed and it would be advisable to obtain any new federal policy guidelines from the Office of Management and Budget, Office of Federal Procurement Policy.



11. The Department of Defense has been waiving its 50% differential requirement on a case by case basis, in furtherance of NATO standardization. This should be noted in the first full paragraph on page 77.

12. The report makes certain recommendations to the Office of Management and Budget. It is suggested that recommendation 3 on page 86 be amended by adding at the end: "but further recognizing that such differentials may be the subject of negotiations in the event that adequate progress on a government procurement code is achieved."

13. The portion of the report on specialty steel, especially pages 90-91 should be updated to reflect recent developments. Attached for your reference is a recent press release and fact sheet on the import relief program for specialty steel.

  
William G. Barraclough  
Acting Deputy Assistant Secretary  
for International Trade Policy

Attachments:  
As stated.

GAO note: Page references in this appendix refer to the draft report and not the final report.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Administration**  
Washington, D.C. 20230

JUL 12 1976

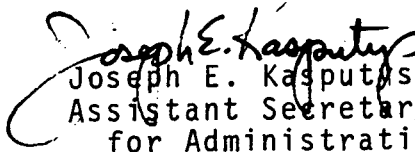
Mr. Henry Eschwege  
Director, Community and Economic  
Development Division  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of June 2, 1976, requesting comments on the draft report entitled "Buy-National Preferences Limit Most Governmental Procurement to Available Domestic Sources -- United States, Great Britain, France, Germany, and Japan."

We have reviewed the enclosed comments of the Assistant Secretary for Policy and believe they are responsive to the matters discussed in the report.

Sincerely,

  
Joseph E. Kasputis  
Assistant Secretary  
for Administration

Enclosure



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Policy**  
Washington, D.C. 20230

July 12, 1976

Mr. Henry Eschwege  
Director, Community and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

We are forwarding general comments on a draft GAO report to the Congress entitled "Buy-National Preferences Limit Most Government Procurement to Available Domestic Sources--United States, Great Britain, France, Germany and Japan," on which you requested our comments.

A basic finding of the report, reflected in its title, is one which we in the Department of Commerce have lived with for many years. In the absence of international trade rules on government purchasing, however, it should not be surprising that governments display a buy-national bias when buying goods for their own use. The report confirms the continued existence of some of the restrictive practices in this area known to us and also reveals some other aspects of which we were not aware.

Despite the best efforts to shed light on the subject, some aspects of government purchasing are likely to remain obscure. For reasons of their own, governments which engage in buying goods and private suppliers of such goods hold certain information on purchase transactions closely. Though some private American businessmen abroad have spoken frankly on government purchasing practices to GAO investigators, we have found over the years a reluctance by business representatives to complain to us about unfair foreign practices in government purchasing for fear of being "black-listed" in the host country. Government purchasing practices are complex operations which defy easy explanation. Reliable data are not available, for example, on what and how much governments, including the U.S. Government, buy in the way of foreign goods.

We believe there is possibility for misunderstanding of the statement on page 14 of the report that "the Buy American Act is not the primary barrier to purchasing from foreign sources," especially when read together with the statement that "Of the \$44.6 billion procurement reviewed only about \$1.3 billion was subject to foreign competition for commodities available from the United States." In the first place, these statistics compare total purchases of goods and services with purchases of goods only. Secondly, no reference is made in the GAO draft report to the Buy American Act's authorization to buy foreign goods when domestic substitutes are not available in sufficient quantity or of adequate quality, nor is the value of such foreign purchases indicated. Finally, the cited figure is based on the existing situation, and not on what the situation might be if the Buy American Act strictures were removed. We suspect that an important number of foreign suppliers are simply unwilling to bid for a Defense Department order at present when they must overcome a 50 percent price differential in favor of domestic goods.

We strongly support the statement on the first page of the report digest that the United States should not unilaterally eliminate its buy-national preferences. Such action should be preserved for use as a bargaining chip in the current trade negotiations, in order to obtain agreement of other countries to open their government procurement systems.

The discussion on page 9 of the draft report concerning the ongoing efforts within the OECD to develop an international code on government procurement is somewhat cursory. Participants in this effort are trying to develop a code which provides for rules to discourage discrimination against foreign suppliers in procurement activities as a response to the government purchasing problem. Any code agreement on government purchasing would, of course, come under the scrutiny of the Congress in accordance with the Trade Act of 1974. We accordingly suggest that the report provide a fuller account of this effort. We further propose that the judgment appearing on page 9 of the report that "an effective agreement is doubtful" should be dropped. Progress on the code has been slow and many hurdles lie ahead, but the foregoing conclusion is premature.

The report on page 13 lists three elements which should be adequately reflected in any international procurement code the United States may decide to accept. We concur

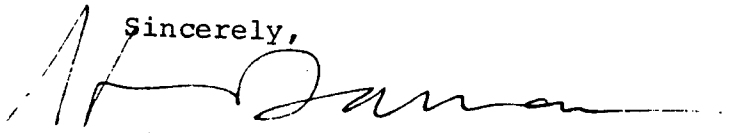
with the recommended needs for "transparency" in the agreement, that is, for practices and procedures spelled out in the code to guard against discrimination in government purchasing; for procedures to deal with protests and disputes, including those arising from allegations of buy-national bias; and for surveillance procedures to oversee the operation of such a code. U.S. negotiators are discussing with other countries appropriate provisions to cover these aspects of the code.

Chapter 4 of the report (pages 41-52), "Views of U.S. Industry," is misleading and lacks balance in reporting U.S. industry views. The discussion in this chapter concerns "industries most impacted by foreign competition" which are protected from foreign competition by "various buy-national policies of the U.S. Government." By concentrating on a few less competitive sectors, the chapter seems to ignore important segments of U.S. industry, including those in the high technology areas, which clearly have an interest in improved access on fair terms to foreign public sector markets. In addition, certain U.S. industries are supporting the development of an acceptable international code on government procurement in the hope of constraining the possible introduction of new government purchasing restrictions by other countries in support of their domestic industrial development objectives.

Chapter 5 of the report (pages 53-73) dealing with buy-national practices of the major trading partners, should be expanded to include an analysis of efforts by the European Community (EC) to coordinate procurement of member states. Embodied in a proposed Council directive, the EC rules on government procurement would liberalize procurement practices within the Community. The EC has taken the position, however, that this liberalization would be extended to non-EC countries only when there is agreement on an international procurement code. Clearly, therefore, if such agreement is not reached and the EC liberalizes procurement internally only, U.S. exporters would be at a further disadvantage in EC government markets.

I hope that you will find these comments useful in the review of your draft report.

Sincerely,



Richard G. Darman  
Assistant Secretary for Policy

GAO note: Page references in this appendix refer to the draft report and not the final report.

THE SPECIAL REPRESENTATIVE FOR  
TRADE NEGOTIATIONS  
WASHINGTON

JUL 7 1976

Mr. Victor L. Lowe, Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Lowe:

My staff and I very much appreciate the opportunity to comment on the draft report forwarded with your letter of June 2, 1976.

We certainly agree with most of the major conclusions of the report, most notably that all the major trading nations of the world, including the U.S., "follow buy-national practices which limit most government procurement to their respective available domestic sources." Additionally "buy-national preferences are due to political, military, and economic considerations and to a natural bias to deal with domestic suppliers."

We do have a problem, however, with the conclusion, on page 9, that, "attempts at negotiating a code on government procurement among the OECD countries has thus far had negligible results." If results are to be determined solely on the basis of whether or not a code has been negotiated then we would have no problem with the word "negligible." We would prefer, however, to calculate results on the basis of how much has been achieved in resolving differences that remain in reaching code agreement. On this basis results are certainly more than negligible. In connection with this paragraph on page 9 we would note that since your draft was written, the countries participating in the Multilateral Trade Negotiations have agreed to set up an NTB Sub-group which would focus, in Geneva, on the matter of the negotiation of an international code on government procurement.

There are three elements of your draft which lead us to suggest to you that consideration be given to the publication of this report as a restricted document. (1) You properly state that "a 50 percent differential solely for balance of

payments reasons is not justified" (pg.v). While we could agree that the balance of payments rationale is long since gone, and while we both agree that "it is not desirable for the United States to unilaterally make major concessions to eliminate its buy-national preferences" (page i and page 12), the minimum net effect of the publication of your first quote would be to dilute the currency which the balance of payments preference provides for our on-going negotiations.

(2) On pg. ii you report that "only 3 percent ... of procurement GAO reviewed was open to competition from both domestic and foreign sources." We are aware that this conclusion is based on unclassified data provided by each of the surveyed agencies. However, the conclusion derived, if published, would provide the first admission by an agency of the U.S. Government as to how restrictive the U.S. procurement system is. Does this not provide unreasonable aid and comfort to those with whom we are negotiating? (3) Appendix I provides a chapter and verse listing of the restrictive elements of the U.S. procurement system. Admittedly, anyone could produce such a listing if they would undertake an extensive review of the U.S. Code, the Armed Services Procurement Regulations, and the Federal Procurement Regulations. But should we be handing this product on a silver platter to those on the other side of the negotiating table?

We have no problems with the recommendations of the report.

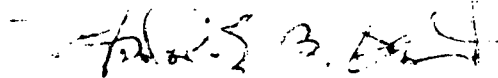
A few factual observations may be in order: (a) On page 2, you may wish to delete ERDA from the list of agencies which are exempt from either DOD or GSA procurement regulations; (b) The last sentence of the last full paragraph on pg. 90 should read, "The recommended annual quota of 146,000 tons is about 4 percent below the 153,700 tons of stainless steel products and alloy tool steel imported in 1975." In this connection, as you predicted on pg. 91, the President, earlier this month, did proclaim import quotas on specialty steel. Attached is our press release on the proclamation, in the event that you may wish to include its details in your final report.

One final observation, concerning the last paragraph on pg. 2 -- we would suggest that the following formulation of that paragraph would be more precise and informative:

"The Department of State, consistent with its foreign relations role, participates actively in matters relating to international procurement while the Department of Commerce is frequently involved in trade complaints lodged by American citizens and companies against foreign procurement practices. Both Departments participate, along with DOD, Treasury, Labor, OMB, and GSA, in the interagency task force chaired by the Office of the Special Trade Representative, in formulating U.S. policies that guide the on-going trade negotiation looking toward an international code governing government procurement."

My staff will be most happy to continue working with you to perfect the report. For this purpose please contact Morton Pomeranz on 395-6166.

Sincerely,



Frederick B. Dent

#### Attachment

GAO note: Page references in this appendix refer to the draft report and not the final report.





TENNESSEE VALLEY AUTHORITY  
KNOXVILLE, TENNESSEE 37902

June 30, 1976

Mr. Monte Canfield, Director  
Energy and Minerals Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Canfield:

As requested, we have reviewed the draft report entitled "Buy-National Preferences Limit Most Governmental Procurement to Available Domestic Sources--United States, Great Britain, France, Germany and Japan," enclosed in your letter dated June 2, 1976, and have the following comments:

Pages 11 and 14: Both in the digest and in the body of the report, it is noted that the Buy American Act is not the primary barrier of governmental purchases of foreign source material; other restrictions are described. It could also be mentioned that insofar as TVA is concerned, the Treasury Department's finding of dumping in 1971 of high voltage transformers under the Antidumping Act of 1921 resulted in a severe reduction in the number of bids from foreign sources on TVA invitations to bid for these types of transformers.

Page iv: In the digest, the discussion of the Buy American Act contains the statement: "The provisions are administered through a standard contractual clause which requires that a supplier certify that only U.S.-source items will be used." We believe that this statement should be revised to indicate that the supplier must also certify that the cost of the domestic components of the end product exceeds 50 percent of the cost of all components. This is explained in the body of the report on page 78.

Page 2: While it is true that TVA's policies with respect to application of the Buy American Act are similar to the Department of Defense's and the General Services Administration's procurement regulations, they do not reflect the policies of these regulations as stated in the draft report but reflect the policies of the Buy American Act and the Executive orders and executive policy promulgated thereunder.

Page 6: The dollar value of TVA's foreign procurement in fiscal year 1974 is reported as \$193 million on page 6 and as \$194 million on page 34. The actual amount was \$193,854,696. We suggest that the same round figure be used both places. We suggest also that it be explained on page 6, as it is on page 34, that \$184.4 million of that amount was for turbine generators purchased under an invitation to bid where the domestic manufacturers refused to accept the terms and conditions contained in the invitation and the only responsive bidder was the foreign manufacturer.

Mr. Monte Canfield, Director

June 30, 1976

Page 35: We suggest that the last paragraph on page 35 make clear that Canadian firms are treated as domestic sources for Department of Defense procurements only. TVA considers Canadian firms as foreign and applies the 6-percent or 12-percent differential to bids from Canadian firms when they are competing with domestic firms.

Page 50: In comparing the policies of utilities of Europe and Japan for the procurement of heavy electrical equipment with the policies of the United States Government, the draft report refers to "the more liberal policies of U.S. Government power agencies--TVA, Bonneville Power Administration, and the Bureau of Reclamation." This characterization is somewhat misleading. The foreign procurement policy of the United States involves a number of complicated issues, such as the balance of payments situation, domestic unemployment, national security, the effect on Federal tax revenues, and the stimulus to the efficiency of domestic manufacturers by foreign competition. Because these and other matters relating to the foreign policy and foreign trade policy of the United States go beyond TVA's area of responsibility and competence, TVA does not attempt to decide them but follows the guidelines established by Congress in the Buy American Act and by the President in Executive Order 10582 for the United States Government as a whole. Other than the Department of Defense, we are not aware of any department or agency using foreign bid evaluation factors other than those specified in the Executive order and executive policy formulated under the Buy American Act. Accordingly, the draft report should properly refer to the foreign procurement policy of the United States Government as a whole rather than the policy of TVA.

Page 86: With regard to item 2, it should be pointed out that TVA's practice is to require such information in its invitations to bid.

We appreciate the opportunity to review and comment on the draft report.

Sincerely yours,



Lynn Seeber  
General Manager

GAO note: Page references in this appendix refer to the draft report and not the final report.

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



July 8, 1976

Honorable Elmer B. Staats  
Comptroller General of the United States  
General Accounting Office  
Washington, DC 20548

Dear Mr. Staats:

Thank you for your letter of June 1, 1976, transmitting a copy of  
the draft report to the Congress entitled "Buy-National Preferences  
to Limit Most Governmental Procurement to Available Domestic  
Sources -- United States, Great Britain, France, Germany, and  
Japan."

We have reviewed the report and concur in its findings and  
recommendations.

We appreciate the opportunity to review and comment on the report.

Sincerely,

JACK ECKERD  
Administrator

BEST COPY AVAILABLE

BEST COPY AVAILABLE



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUL 9 1976

Mr. Henry Eschwege  
Director, Community and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

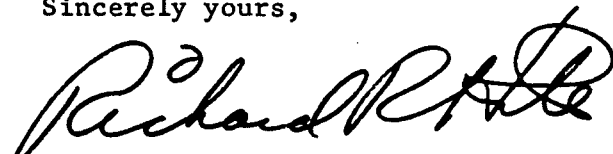
Dear Mr. Eschwege:

This is in response to your letter of June 2, 1976, enclosing a draft report to the Congress relative to Buy-National preferences, and requesting our comments thereon.

Accordingly, we have reviewed the draft and we find that the data ascribed to the Department of the Interior is consistent with that which we reported. Generally, we are impressed with the depth of the review of foreign procurement activity and we believe that the information should be very beneficial to the Congress in its consideration of the possible need for changes in the Buy-American requirements. We support the recommendations you have proposed.

We appreciate the opportunity to be involved in this important project and for the opportunity to review the draft report.

Sincerely yours,

  
Deputy Assistant Secretary of the Interior



OFFICE OF THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

ASSISTANT SECRETARY  
FOR ADMINISTRATION

August 4, 1976

Mr. Henry Eschwege  
Director  
Resources and Economic Development  
Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

This responds to your request for comments on your draft report of June 3, 1976, entitled "Buy-National Preferences Limit Most Governmental Procurement to Available Domestic Sources--United States, Great Britain, France, Germany and Japan."

The report was reviewed within the context of the recommendations to be made to the Director, Office of Management and Budget, and the Administrator, Office of Federal Procurement Policy, for mitigating some of the outstanding problems in administering the Buy American Act.

The Department of Transportation concurs in all the recommendations made in the report except the second. The second recommendation proposes that Federal agencies request bidders, on a sampling basis, in high dollar value procurements to disclose certain specific information relative to foreign origin components included in a bid. Supposedly such information will be useful in evaluating the extent price differentials should apply to foreign components in domestic procurements. I question the objective of such a test because the imposition and the amount of an evaluation factor to be applicable to foreign products offered in Federal procurements is based on national policy rather than specific economic considerations. Collection of miscellaneous data on a random basis is not apt to yield a statistically valid base for determining the extent of price differentials to apply to foreign components in Federal procurements in general. Additionally, the considerable cost to offerors to furnish requested data is seen as increasing the price of items offered to the Federal Government.

Sincerely,

  
William S. Heffelfinger

PRINCIPAL OFFICIALS RESPONSIBLE FOR  
ADMINISTRATION OF ACTIVITIES  
DISCUSSED IN THIS REPORT

-----  
 Tenure of office  
 From                      To  
 -----

DEPARTMENT OF COMMERCE

SECRETARY OF COMMERCE:

Elliot Richardson	Feb. 1976	Present
Rogers C. B. Morton	May 1975	Jan. 1976
Frederick B. Dent	Feb. 1973	Mar. 1975

DEPARTMENT OF DEFENSE

SECRETARY OF DEFENSE:

Donald Rumsfeld	Nov. 1975	Present
James Schlesinger	July 1973	Nov. 1975

DEPARTMENT OF INTERIOR

SECRETARY OF INTERIOR:

Thomas S. Kleppe	Oct. 1975	Present
Stanley K. Hathaway	June 1975	July 1975
Rogers C. B. Morton	Jan. 1971	May 1975

DEPARTMENT OF STATE

SECRETARY OF STATE:

Henry Kissinger	Sept. 1973	Present
-----------------	------------	---------

DEPARTMENT OF TRANSPORTATION

SECRETARY OF TRANSPORTATION:

William T. Coleman Jr.	Mar. 1975	Present
Claude S. Brinegar	Feb. 1973	Feb. 1975

GENERAL SERVICES ADMINISTRATION

ADMINISTRATOR:

Jack Eckerd	Nov. 1975	Present
Arthur F. Sampson	June 1972	Oct. 1975

Tenure of office  
From                      To

OFFICE OF MANAGEMENT AND BUDGET

DIRECTOR:

James T. Lynn	Feb. 1975	Present
Roy A. Ash	Feb. 1973	Feb. 1975

OFFICE OF FEDERAL PROCUREMENT POLICY

ADMINISTRATOR:

Hugh E. Witt	June 1974	Present
--------------	-----------	---------

OFFICE OF THE SPECIAL REPRESENTATIVE  
FOR TRADE NEGOTIATIONS

SPECIAL REPRESENTATIVE FOR TRADE  
NEGOTIATIONS:

Frederick B. Dent	Mar. 1975	Present
William D. Eberle	Nov. 1971	Jan. 1975

TENNESSEE VALLEY AUTHORITY

CHAIRMAN:

Aubrey J. Wagner	June 1962	Present
------------------	-----------	---------