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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of the United States

In accordance with Article IX:4 of the Agreement on Government Procurement the Committee on Government Procurement agreed at its first meeting on 15 January 1981, to invite the Parties to submit as soon as possible the complete texts of their national laws, regulations and procedures on government procurement to the secretariat where the texts would be open for inspection. In addition, the basic documents relating to the implementation of the Agreement should be submitted for information in a GATT language and would be circulated to the Committee.

With respect to these procedures, the United States is currently compiling the complete texts of United States laws, regulations and procedures and will submit them to the GATT secretariat in due course. The basic United States implementation documents are hereby circulated to the Committee. These include:

- Determination Regarding Acceptance and Application of the Agreement on Government Procurement of the Office of the United States Trade Representative
- Presidential Executive Order 12260 - Agreement on Government Procurement
- Revised Federal Procurement Regulations (FPR) of the General Services Administration
- Revised Defense Acquisition Regulations (DAR) of the Department of Defense
- Revised Procurement Regulations of the National Aeronautics and Space Administration (NASA PR).

*English only/anglais seulement/inglés solamente

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Acceptance and Application of the Agreement on Government Procurement

1. Pursuant to section 102 of the Trade Act of 1974 (19 U.S.C. 2112(b)), the President, through his duly empowered representative, on April 12, 1979, entered into the Agreement on Government Procurement negotiated in the Tokyo Round of Multilateral Trade Negotiations.

2. In accordance with sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Agreement on Government Procurement was submitted to Congress for its approval. Section 2 of the Trade Agreements Act of 1979 ("the Act") (93 Stat. 147, 19 U.S.C. 2503) approves the Agreement on Government Procurement and authorizes the President to accept the Agreement on Government Procurement provided that the President determines that all, or all but one, of the major industrial countries (as defined in section 126(d)) is also accepting the agreement.

3. The Memorandum of the President of December 14, 1979, "Determination Regarding Multilateral Trade Negotiations", authorized the United States Trade Representative or his designee, pursuant to the provisions of section 2 of the Act of 1979 (93 Stat. 147, 19 U.S.C. 2503) and section 301 of title 3 of the United States Code, to sign the Agreement on Government Procurement on behalf of the United States of America, subject to satisfactory completion of negotiations on entity coverage under the Agreement. Section 1-103(b) of Executive Order 12188 delegates the functions of the President under section 2(b) of the Act to the United States Trade Representative, who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, I, Robert D. Hormats, Acting United States Trade Representative, acting in conformity with the provisions of section 2 of the Act (93 Stat. 147, 19 U.S.C. 2503) and section 301 to title 3 of the United States Code, and Executive Code 12188, hereby determine that, with respect to the Agreement on Government Procurement,

1. in accordance with section 2(b) (1) and (3) of the Act (19 U.S.C. 2503(b) (1) and (3)) each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting this agreement; and

2. negotiations with the major industrial countries concerning entity coverage under the Agreement have been satisfactorily completed, and, as to the major industrial countries, the conditions under section 2(b) of the Act (19 U.S.C. 2503(b)) on acceptance of the Agreement on Government Procurement have been fulfilled.

December 23, 1980.

Robert D. Hormats,

Acting United States Trade Representative.

[FR Doc. 80-40553 Filed 12-30-80; 8:45 am]
BILLING CODE 3190-01-M

federal register

Tuesday
January 6, 1981

Part XIII

The President—Office of the United States Trade Representative

Executive Order 12260—Agreement on Government Procurement

Presidential Documents

Executive Order 12260 of December 31, 1980

Agreement on Government Procurement

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511-2518), and Section 301 of Title 3 of the United States Code, and in order to implement the Agreement on Government Procurement, as defined in 19 U.S.C. 2518(1), it is hereby ordered as follows:

1-1 *Responsibilities.*

1-101. The obligations of the Agreement on Government Procurement (Agreement on Government Procurement, General Agreement on Tariffs and Trade, 12 April 1979, Geneva (GATT 1979)) apply to any procurement of eligible products by the Executive agencies listed in the Annex to this Order (eligible products are defined in Section 308 of the Trade Agreements Act of 1979; 19 U.S.C. 2518(4)). Such procurement shall be in accord with the policies and procedures of the Office of Federal Procurement Policy (41 U.S.C. 401 *et seq.*).

1-102. The United States Trade Representative, hereinafter referred to as the Trade Representative, shall be responsible for interpretation of the Agreement. The Trade Representative shall seek the advice of the interagency organization established under Section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected Executive agencies, including the Office of Federal Procurement Policy.

1-103. The interpretation of Article VIII:1 of the Agreement shall be subject to the concurrence of the Secretary of Defense.

1-104. The Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units and shall publish that determination in the Federal Register. Procurement of less than 150,000 Special Drawing Right units is not subject to the Agreement or this Order (Article I:1(b) of the Agreement).

1-105. In order to ensure coordination of international trade policy with regard to the implementation of the Agreement, agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement.

1-2. *Delegations and Authorization.*

1-201. The functions vested in the President by Sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516) are delegated to the Trade Representative.

1-202. Notwithstanding the delegation in Section 1-201, the Secretary of Defense is authorized, in accord with Section 302(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(b)(3)), to waive the prohibitions specified therein.

Jimmy Carter

THE WHITE HOUSE,
December 31, 1980.

ANNEX

1. ACTION
2. Administrative Conference of the United States
3. American Battle Monuments Commission
4. Board for International Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Community Services Administration
9. Consumer Product Safety Commission
10. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
11. Department of Commerce
12. Department of Defense (Excludes Corps of Engineers)
13. Department of Education
14. Department of Health and Human Services
15. Department of Housing and Urban Development
16. Department of the Interior (Excludes the Bureau of Reclamation)
17. Department of Justice
18. Department of Labor
19. Department of State
20. Department of the Treasury
21. Environmental Protection Agency
22. Equal Employment Opportunity Commission
23. Executive Office of the President
24. Export-Import Bank of the United States
25. Farm Credit Administration
26. Federal Communications Commission
27. Federal Deposit Insurance Corporation
28. Federal Home Loan Bank Board

29. Federal Maritime Commission

30. Federal Mediation and Conciliation Service

31. Federal Trade Commission

32. General Services Administration (Purchases by the National Tool Center, and the Region 9 Office in San Francisco, California are not included)

33. Interstate Commerce Commission

34. Merit Systems Protection Board

35. National Aeronautics and Space Administration

36. National Credit Union Administration

37. National Labor Relations Board

38. National Mediation Board

39. National Science Foundation

40. National Transportation Safety Board

41. Nuclear Regulatory Commission

42. Office of Personnel Management

43. Overseas Private Investment Corporation

44. Panama Canal Commission

45. Railroad Retirement Board

46. Securities and Exchange Commission

47. Selective Service System

48. Smithsonian Institution

49. United States Arms Control and Disarmament Agency

50. United States International Communication Agency

51. United States International Development Cooperation Agency

52. United States International Trade Commission

53. Veterans Administration

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Application of Agreement on Government Procurement and Waiver of Discriminatory Purchasing Requirements

Section 1-103 of Executive Order 12188 delegates the functions of the President under Section 2(b) of the Trade Agreements Act of 1979 ("the Act") (19 U.S.C. 2503) to the United States Trade Representative ("Trade Representative"), who shall exercise such authority with the advice of the Trade Policy Committee. Section 1-201 of Executive Order 12260 delegates the functions of the President under Sections 301 and 302 of the Act (19 U.S.C. 2511, 2512) to the Trade Representative. Executive Order 12260 also provides in section 1-104 that the Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units.

Now, therefore, I, Robert D. Hormats, Acting United States Trade Representative, in conformity with the provisions of Section 2 of the Act, Sections 301 and 302 of the Act, and Executive Orders 12188 and 12260, do hereby determine, effective on the date of signature of this notice, that, with respect to the Agreement on Government Procurement ("the Agreement"):

1. The countries or instrumentalities listed in Annex 1 have become parties to the Agreement, and will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(1) of the Act, each of these countries is designated for purposes of Section 301(a) of the Act.

2. The countries listed in Annex 2 are least developed countries, as defined in Section 308 of the Act (19 U.S.C. 2518). In accordance with Section 301(b)(4) of the Act, each of these countries is designated for purposes of Section 301(a) of the Act.

3. With respect to eligible products (as defined in Section 308(4) of the Act) of the countries or instrumentalities designated above for purposes of Section 301(a) of the Act, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) to United States products and suppliers of such products; or

(B) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products, shall be waived.

This waiver shall be applied by all Executive agencies listed in Annex A of Executive Order 12260 in consultation with, and when deemed necessary at the direction of, the Trade Representative.

4. The designations in paragraphs 1 and 2 above and the waiver in paragraph 3 above are subject to modification or withdrawal by the Trade Representative.

5. (a) Pursuant to Section 302 of the Act, Executive agencies are prohibited after January 1, 1981, from procuring any products (A) which are products of a foreign country or instrumentality which is not designated under Section 301(b) of the Act, and (B) which would otherwise be eligible products. This prohibition will last until such foreign country or instrumentality is designated under Section 301(b) of the Act.

(b) The above prohibition shall be deferred for a two-year period beginning January 1, 1981, except for products of major industrial countries. Major industrial countries include the member countries of the European Communities, Canada, and Japan.

(c) The above two-year delay may be terminated at any time (causing the prohibition to come into effect) for any or all countries.

6. The dollar equivalent of 150,000 Special Drawing Right units is $196,000. This determination may be modified from time to time as appropriate.

Dated: January 1, 1981.

Robert D. Hormats,

Acting United States Trade Representative.

Annex 1

Austria	Italy
Belgium	Japan
Canada	Luxembourg
Denmark	Netherlands
Federal Republic of Germany	Norway
Finland	Singapore
France	Sweden
Hong Kong	Switzerland
Ireland	United Kingdom

Annex 2

Bangladesh	Malawi
Benin	Maldives
Bhutan	Mali
Botswana	Nepal
Burundi	Niger
Cape Verde	Rwanda
Central African Republic	Somalia
Chad	Western Samoa
Comoros	Sudan
Gambia	Tanzania U.R.
Guinea	Uganda
Haiti	Upper Volta
Lesotho	Yemen AR

[FR Doc. 81-4[illegible]; Filed 1-2-81; 3:32 pm]

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Statement Concerning Executive Order 12260 on Agreement on Government Procurement

On December 31, 1980, the President signed Executive Order 12260 ("the Order") implementing the Agreement on Government Procurement (the "Agreement") and Title III of the Trade Agreements Act of 1979 (the "Act") (19 U.S.C. 2511-2518), effective January 1, 1981.

The Agreement is one of the trade agreements concluded during the Tokyo Round of Multilateral Trade Negotiations. The Agreement was approved by the Congress by Section 2 of the Act (19 U.S.C. 2503). The United States Trade Representative ("Trade Representative"), acting under Section 2(b) of the Act and Section 1-103(b) of Executive Order 12188, accepted the Agreement on behalf of the United States without reservation on December 30, 1980. The Agreement enters into force with respect to the United States on January 1, 1981.

The purpose of the Order is to delineate agency responsibilities for implementing the Agreement and to delegate certain authority for implementing the Agreement. Specifically,

Section 1-101 of the Order requires all agencies listed in the Annex thereto to observe the obligations of the Agreement in their purchases of "eligible products". The definition of "eligible products" is that contained in section 308(4) of the Act (19 U.S.C. 2518(4)). To qualify as an eligible product, a product must satisfy three criteria. The product must be:

1. From a country or instrumentality that is a party to the Agreement;

2. Procured for an Executive agency which is specified in the Order as being subject to the Agreement;

3. Procured in large enough quantities that the contract price exceeds 150,000 Special Drawing Right units.

Section 1-102 gives the Trade Representative the responsibility to interpret the Agreement. This responsibility follows the Trade Representative's broader authority granted in section 1(b)(3) of Reorganization Plan No. 3 of 1979 (44 FR 69173, 93 Stat. 1381), to "issue policy guidance to departments and agencies on basic issues of policy and interpretation * * *" relating to, *inter alia*, the implementation of international trade agreements.

Section 1-103 provides that interpretation of Article VIII:1 of the

Agreement, relating to national defense, shall be subject to the concurrence of the Secretary of Defense.

Section 1-104 gives the Trade Representative the responsibility to make a determination of the dollar equivalent of the 150,000 Special Drawing Right units threshold for coverage of procurement contracts. The Special Drawing Right is the unit of account of the international monetary fund, and is a weighted average of the values of a group of currencies including the U.S. dollar. This determination will be published annually in the Federal Register, or more often if appropriate.

Section 1-105 provides that agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement. The provision was included to ensure the coordination of international trade policy as it relates to the implementation, including negotiations relating to additional coverage, of the Agreement.

Section 1-201 delegates the functions of the President under Title III of the Act to the Trade Representative with the exception of the functions of the President under Section 303 of the Act (19 U.S.C. 2513), which were previously delegated to the Trade Representative in Section 1-103(b) of Executive Order 12188. These functions include:

—Waiver of discriminatory purchasing requirements under Section 301(a) of the Act (19 U.S.C. 2511(a));
—Designation of eligible countries and instrumentalities under Section 301(b) of the Act (19 U.S.C. 2511(b));
—Prohibiting procurement from non-designated countries or instrumentalities under Section 302 of the Act (19 U.S.C. 2512), as well as implementing the two-year delay and case-by-case waiver of purchases under the same Section;
—Reporting and consultation requirements under Sections 302(c), 302(d), 304, 305 and 306 of the Act (19 U.S.C. 2512(c), 2512(d), 2514–2516); and
—Other functions of the President enumerated in Title III of the Act.

Section 1-202 implements the provisions of Section 302(b)(3) of the Act (19 U.S.C. 2512(b)(3)), authorizing the Secretary of Defense to waive the purchasing prohibition of Section 302(a)(1) in the context of reciprocal procurement agreements.

For agencies not included in the Annex to the Order, no change in present procurement practices will be required. Furthermore, to the extent procurement by agencies listed in the Annex is outside the Agreement, the Order will not apply. Procurement not covered by the Agreement includes:

—Contracts of a value not over 150,000 SDR's;
—Procurement by agencies not in the Order, even if done through agencies listed in the Order.
—Contracts where the value of services exceeds 50% of the contract price.

Also, service contracts *per se*, including construction contracts, research and development and transportation or cargo preference schemes, will not be affected by the Agreement.

Under the terms of the Agreement, procurements involving eligible products may be set aside for small business concerns; however, procurements involving eligible products may not be set aside for labor surplus area concerns unless the set-aside is also for small business concerns. The priority of Sections 15(e) and (f) of the Small Business Act, as amended by section 117 of Pub. L. 96-302 (94 Stat. 839), shall prevail.

The provisions of the Act and this Order do not relieve agencies of their obligations to implement the requirements of Pub. L. 95-507 (92 Stat. 1757, 15 U.S.C. 683).

Robert C. Cassidy,
General Counsel.

[FR Doc. 81-476 Filed 1-3-81; 3:32 pm]
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GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

January 12, 1981

FEDERAL PROCUREMENT REGULATIONS
TEMPORARY REGULATION 57

TO: Heads of Federal agencies

SUBJECT: Purchases under the Trade Agreements Act of 1979

1. Purpose. This FPR temporary regulation implements the provisions of the Trade Agreements Act of 1979 and Executive Order 12260, December 31, 1980.

2. Effective date. This regulation is effective for all solicitations issued on and after January 1, 1981, as follows:

a. When solicitations involve negotiated procurements, do not reflect the provisions of this regulation, and have not resulted in awards prior to January 21, 1981, the solicitation shall be amended to include the requirements in § 1-6.1611.

b. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is prior to January 21, 1981, awards may be made without regard to this regulation.

c. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is after January 21, 1981, but the solicitation was issued before that date, the solicitation shall be amended to include the requirements in § 1-6.1611.

d. All solicitations issued after January 21, 1981, shall comply fully with the provisions of this regulation.

3. Expiration date. This regulation will continue in effect until January 1, 1983.

4. Background.

a. New subpart 1-6.16 implements the Agreement on Government Procurement, which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral Trade Negotiations. The agreements were entered into in Geneva on April 12, 1979, pursuant to section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Public Law 96-39, 19 U.S.C. 2511-2518), Executive Order 12260, December 31, 1980 (46 FR 1653, January 6, 1981), and Determinations by the U.S. Trade Representative, December 31, 1980 (46 FR 1657, January 6, 1981).

b. The Agreement requires the administration of certain procurement programs so that eligible products and suppliers of eligible products from designated countries are treated no less favorably than domestic products and suppliers. It also requires that there be no discrimination with respect to eligible products or suppliers from designated countries.

c. The Buy American Act, subject to certain exclusions, has been waived by the President for eligible products originating in designated countries meeting the requirements under section 301(b) of the Act. The waiver is effective when the total price paid for a product is equal to or more than the dollar threshold specified by the U.S. Trade Representative (now $196,000). The dollar limitation may be modified from time to time. The Buy American Act continues to apply to procurements which are less than the dollar limitation and to countries that are not parties to the Agreement.

5. Explanation of changes.

a. Section 1-1.1003-7 is amended to add new paragraph (b)(10) as follows:

§ 1-1.1003-7 Preparation and transmittal.

* * * * *

(b) * * *

(10) Trade Agreements Act of 1979--eligible products. For the procurement of an eligible product from a designated country when the total estimated price of the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), each synopsis sent to the Commerce Business Daily, in addition to other requirements of this § 1-1.1003-7(b), shall indicate:

(i) The nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature;
(ii) Whether the purchase is open (competitive) or sole source;
(iii) Any delivery date requirements;
(iv) The address and final date for submitting an application to be invited to offer or for receiving offers;
(v) That offers must be submitted in the English language and in U. S. dollars;
(vi) The address of the activity that will award the contract and any information necessary for obtaining specifications and other documents;

(vii) Any economic and technical requirements, financial guarantees, and information required from suppliers that is stated in the solicitation; and

(viii) The amount and terms of payment of any sum required in order to obtain the solicitation documentation, if any.

b. Section 1-2.202 is amended to add new paragraph (d) to § 1-2.202-1 and to add a new § 1-2.202-7, as follows:

§ 1-2.202 Miscellaneous rules for solicitation of bids.

§ 1-2.202-1 Bidding time.

* * * * *

(d) Trade Agreements Act of 1979--eligible products. When a solicitation involves eligible products under the Trade Agreements Act of 1979, and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall specify at least a 30-day bidding time from the date of issuance of the solicitation (see § 1-6.1605-1(b)(4)).

* * * * *

§ 1-2.202-7 Trade Agreements Act of 1979--eligible products.

When a solicitation involves eligible products and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall require that offers be submitted in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

c. Section 1-2.203-4 is amended to designate the existing paragraph as (a) and to add a new paragraph (b) as follows:

§ 1-2.203-4 Synopses of invitations for bids.

(a) * * *

(b) The synopsis of a proposed procurement of an eligible product from designated countries, when the total estimated price of the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), shall state that offers must be in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

d. Section 1-2.402 is amended to add paragrah (d) as follows:

§ 1-2.402 Opening of bids.

* * * * *

(d)(1) When offers involving eligible products from a designated country are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present.

(2) The name of the impartial witness, if any, shall appear on the abstract of offers.

e. Section 1-2.408 is amended to redesignate the present text as § 1-2.408-1 and to add a new § 1-2.408-2 as follows:

§ 1-2.408 Information to bidders/

§ 1-2.408-1 Rejection of offers (general).

* * * * *

§ 1-2.408-2 Rejection of offers under the Trade Agreements Act of 1979.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country, and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see §§ 1-6.1601(e) and 1-6.1608).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

f. Section 1-3.105 is added as follows:

§ 1-3.105 Trade Agreements Act of 1979--eligible products.

§ 1-3.105-1 Time for the submission of offers.

When solicitations involve eligible products under the Trade Agreements Act of 1979 and the total estimated price of a product

is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall specify at least 30 days for the submission of offers (see § 1-6.1605-1(b)(4)).

§ 1-3.105-2 English language and U.S. dollars.

When a solicitation involves eligible products and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall require that offers are to be submitted in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

§ 1-3.105-3 Opening offers.

(a) When offers involving eligible products from designated countries are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present. However, there shall be no disclosure of the offers.

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.402 and 1-3.811).

§ 1-3.105-4 Notification of nonacceptance of offer.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

g. Subpart 1-6.16 is added as follows:

SUBPARTS 1-6.11--1-6.15 [Reserved]

SUBPART 1-6.16 PURCHASES UNDER THE TRADE AGREEMENTS ACT OF 1979.

§ 1-6.1600 Scope.

This subpart implements the Agreement on Government Procurement (hereafter referred to as the Agreement) which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral

Trade Negotiations. The Agreements were entered into in Geneva on April 12, 1979, pursuant to section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Public Law 96-39, 19 U.S.C. 2511-2518) and Executive Order 12260, December 31, 1980, (46 FR 1653, January 6, 1981) and Determinations by the U.S. Trade Representative, December 31, 1980, (46 FR 1657, January 6, 1981).

§ 1-6.1601 Definitions.

The terms used in this subpart have meanings as follows:

(a) "Designated country" means a country or instrumentality designated by the President or the U.S. Trade Representative under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511). Designated countries are listed at § 1-6.1612. Additions will be announced in later FPR changes.

(b) "Eligible product" means, with respect to any designated country, a product of that country which is covered by the Agreement for purposes of acquisition. This includes services (other than transportation) incidental to the supply of products if the value of those incidental services does not exceed the value of the products themselves. It does not include service contracts. For the United States, all products are eligible, except to the extent that they are excluded by reason of the absence of an agency from the list of agencies in § 1-6.1613.

(c) "Product" means a line item in a solicitation. However, if two or more line items carry identical stock numbers or other identification, this situation shall be deemed to constitute a single line item.

(d) "Rule of Origin" means that an article is a product of a designated country if (1) it is wholly the growth, product, or manufacture of that country, or (2) in the case of an article which consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed (see § 1-6.1609).

(e) "Dollar threshold" means $196,000 or such other dollar amount as may be specified by the U.S. Trade Representative, from time to time.

§ 1-6.1602 Policy.

(a) Offers of eligible products from designated countries shall be solicited and evaluated in the same manner as offers of products from the United States. Designated countries are listed in § 1-6.1612.

(b) When the country of origin is not listed in § 1-6.1612, the Buy American Act (see Subpart 1-6.1) and the Balance of Payments Program (see Subpart 1-6.8) are applicable. In addition, those subparts apply if the total price paid for an eligible product is less than the specified dollar threshold (see § 1-6.1601(e)).

(c) The Buy American Act; i.e., the preference for U.S. products in the award of contracts, is, or may be, waived (subject to a number of exclusions; see § 1-6.1603) for purchases specifically covered by the Agreement.

(d) Countries that benefit from open competition for contracts awarded by the Government are required to offer reciprocal competitive opportunities to U.S. products and suppliers. The Agreement prohibits discrimination against U.S. suppliers in procurements by foreign governments. It also requires nondiscrimination and open and transparent application of required procurement procedures.

§ 1-6.1603 Applicability.

(a) The policies in this subpart apply only (1) if the total price paid for an eligible product (not two or more different eligible products) from a designated country is equal to or more than the specified dollar threshold, and (2) to the agencies listed in § 1-6.1613.

(b) If a contracting officer determines that an individual requirement for the acquisition of a product or products of the same type; e.g., an indefinite quantity type contract, may result in payments during the fiscal year which are equal to or more than the specified dollar threshold, the policies in this subpart shall apply.

(c) No acquisition of an eligible product shall be the subject of more than one solicitation for the purpose of reducing the value of the resulting offers to amounts less than the specified dollar threshold.

(d) When a solicitation for an eligible product results in two or more contract awards for the product, the provisions of this Subpart 1-6.16 apply if the total amount of the contracts is equal to or more than the specified dollar threshold.

(e) The policies in this subpart do not apply to:

(1) Purchases under small business set-aside programs or minority business programs (see § 1-6.1604);

(2) Purchases of arms, ammunition, or war materials, or purchases indispensible for national security or national defense purposes, subject to policies established by the U.S. Trade Representative;

(3) Construction contracts;

(4) Service contracts (but services other than transportation incidental to the purchase of eligible products are covered by the Agreement, provided that the value of the service is not greater than the value of the product);

(5) Research and development contracts;

(6) Purchases for resale purposes;

(7) Purchases relating to the products of handicapped persons, of philanthropic institutions, or of prison labor;

(8) Leases or rentals of any item;

(9) Purchases for agencies not subject to the Agreement;

(10) Tied-aid procurements under AID foreign assistance programs; or

(11) Purchases by State and local governments, including purchases by State and local authorities with Federal funds.

§ 1-6.1604 Labor surplus area set-asides.

(a) Total labor surplus area set-asides which are not limited to small business shall not be made for procurements covered by this Subpart 1-6.16.

(b) Total or partial set-asides for small and minority businesses, whether or not combined with a labor surplus area set-aside (see section 117(e) of Pub. L. 96-302), are not covered by the Agreement (see § 1-6.1603).

§ 1-6.1605 Procedures for the purchase of eligible products from designated countries.

§ 1-6.1605-1 Solicitation procedures under this subpart.

When the estimated price of an eligible product included in a solicitation is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the following solicitation procedures are applicable. However, if the offer received for an eligible product which is the basis for the award is less than the dollar threshold, this subpart does not apply (see § 1-6.1603).

(a) Publicizing proposed purchases. When the estimated price of an eligible product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), a notice of proposed purchase shall be published in the Commerce Business Daily, in accordance with the requirements in § 1-1.1003-7(b)(10).

(b) Solicitation of eligible products from designated countries.

(1) Sources offering eligible products from designated countries shall be included, upon request by these sources, on bidders mailing lists and comparable source lists, in accordance with the procedures in § 1-2.205.

(2) Solicitations for eligible products shall be sent directly to the sources for the products which appear on appropriate bidders mailing lists. When solicitations will be sent outside the United States, international airmail shall be employed (see §§ 1-2.202-1 and 1-2.203-1).

(3) Solicitations involving eligible products shall be made available, on request, to the embassy or other designated place or representative of a designated country.

(4) At least 30 days from the date of a solicitation shall be provided, consistent with the nature of and requirements for supplies or services, for the submission of offers involving eligible products from designated countries (see §§ 1-2.202-1 and 1-3.105-1).

(5) No technical requirements may be imposed solely for the purpose of precluding the acquisition of eligible products from designated countries.

(6) Solicitations shall require that offers involving eligible products from designated countries be submitted in the English language and in U.S. dollars (see §§ 1-2.201(a)(33), 1-2.202-7, and 1-3.105-2).

§ 1-6.1606 Opening of offers.

(a) When offers involving eligible products are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present (see §§ 1-2.402 and 1-3.105-3).

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.403 and 1-3.811).

§ 1-6.1607 Evaluation of offers.

Offers of eligible products from designated countries which are equal to or more than the specified dollar threshold (see § 1-6.1601(e)), shall be evaluated without regard to the Buy American Act or Balance of Payments Program, except as provided in § 1-6.1603.

§ 1-6.1608 Information to unsuccessful offerors.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted (see §§ 1-2.408-2(a) and 1-3.105-4(a)) when an offer involves an eligible product from a designated country and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

(b) Subsequent to the notice, if additional information is requested by an unsuccessful offeror, it shall be provided by an official above the level of the contracting officer (see §§ 1-2.408-2(b) and 1-3.105-4(b)).

§ 1-6.1609 Certificate of eligible product.

(a) Contracting officers shall rely on certificates by the offeror for purposes of satisfying the Rule of Origin. The following certificate shall be inserted in all solicitations for eligible products when the estimated price is equal to or more than the specified dollar threshold (see § 1-6.1603).

Certificate of Eligible Product

(a) The offeror hereby certifies that each eligible product, as provided in 41 CFR 1-6.1601, which is delivered in accordance with any contract resulting from this solicitation is from a country designated by the President or the U.S. Trade Representative pursuant to section 301 of the Trade Agreements Act of 1979.

(b) Offerors are encouraged to obtain advance decisions from the Commissioner of Customs regarding the origin of eligible products as provided in 19 CFR Part 177. Decisions rendered by the Commissioner should accompany the offer.

(End of Certificate)

(b) The reliance of the contracting officer on the certification for award purposes shall not be affected by a failure of an offeror to obtain an advance decision and to furnish a copy of the decision with its offer.

(c) Any question regarding the validity of a certification which the Contracting Officer receives from another offeror shall be referred to the Commissioner of Customs for consideration by the offeror whose certification is challenged. It shall not be treated as a basis for holding up an award. However, failure of a challenged offeror to refer the matter to the Commissioner of Customs, upon the request of the Contracting Officer, will result in rejection of the offer.

(d) If a certification subsequently is determined by the Commissioner of Customs to be invalid, the imposition of penalties as authorized by law shall be considered, e.g., criminal penalty for false representation under 18 U.S.C. 1001.

§ 1-6.1610 Reporting requirements.

The reporting requirements of the Trade Agreements Act of 1979 will be satisfied by Individual Agency Procurement Action Reports.

§ 1-6.1611 Buy American Act clause.

When an eligible product is involved, the clause prescribed by § 1-6.104-5 and by Standard Forms 32 and 147 shall be amended by adding an addendum to the solicitation which provides for the incorporation of a parenthetical phrase following the title of the clause as follows:

(This Buy American Act clause is not applicable to contracts involving eligible products from designated countries when the award price for the product is $(insert prescribed amount) or more.)

§ 1-6.1612 Designated countries.

Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Federal Republic of Germany
Finland
France
Gambia
Guinea
Haiti
Hong Kong
Ireland
Italy
Japan
Lesotho
Luxembourg
Malawi
Maldives
Mali
Nepal
Netherlands
Niger
Norway
Rwanda
Singapore
Somalia
Sweden
Switzerland
Western Samoa
Sudan
Tanzania U.R.
Uganda
United Kingdom
Upper Volta
Yemen AR

§ 1-6.1613 Agencies covered by the Agreement.

Action
Administrative Conference of the United States
American Battle Monuments Commission
Board for International Broadcasting
Civil Aeronautics Board
Commission on Civil Rights
Commodity Futures Trading Commission
Community Services Administration
Consumer Product Safety Commission

Departments of--
- Agriculture 1/
- Commerce
- Defense 2/
- Education
- Health and Human Services
- Housing and Urban Development
- Interior 3/
- Justice
- Labor
- State
- Treasury

Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Trade Commission
General Services Administration 4/
Inter-State Commerce Commission
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission

Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Smithsonian Institution
United States Arms Control and Disarmament Agency
United States International Communication Agency
United States International Development Cooperation Agency
United States International Trade Commission
Veterans Administration

1/ The Agreement on Government Procurement does not apply to the procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs.
2/ Excludes Corps of Engineers.
3/ Excludes the Bureau of Reclamation.
4/ Excludes purchases by the National Tool Center, and the Region 9 Office (San Francisco, California).

§ 1-6.1614 Ineligibility to participate in U.S. procurement.

No purchase which is equal to or more than the specified dollar threshold may be made by an agency listed in § 1-6.1613 of an eligible product subject to the Agreement from countries listed in this § 1-6.1614. However, this limitation may be waived in the national interest in accordance with policies established by the U.S. Trade Representative.

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6. Agency action. Pending the issuance of a permanent amendment to the Federal Procurement Regulations, agencies shall follow the policies and procedures in this temporary regulation.

7. Submission of comments. Time did not permit the solicitation of comments prior to the issuance of this regulation. However, comments from interested parties would be welcomed. ADDRESS: General Services Administration (VR), Washington, DC 20406.

RAY KLINE
Acting Administrator of General Services

OFFICE OF THE UNDER SECRETARY OF DEFENSE

Washington, D.C. 20301

7 January 1981

The Trade Agreements Act of 1979 (Public Law 96-39) was effective on 1 January 1981 and was implemented by Executive Order 12260, dated 31 December 1980.

To meet the commitment of the Department of Defense to publish DAR coverage concurrently with the issuance of the Executive Order, the DAR Council developed the attached DAR Section VI, Part 16 coverage on a priority basis. The 1 January 1981 deadline precluded our usual pre-publication request for comments from Industry. The attached coverage was approved by the DAR Council and authorized for Departmental usage on 5 January 1981.

Essentially the major changes are:

- Tab A is a new Part and is provided in its entirety.
- Tab B replaces 7-104.3, as contained in DAC 76-25, except that the clause "Buy American Act and Balance of Payments Program (1980 OCT)" is retained as 7-104.3(a). A new clause "Buy American Act, Trade Agreements Act, and the Balance of Payments Program (1981 JAN)" is added as 7-104.3(b).
- Tab C contains pen and ink changes to 7-2003.5 necessitated by 6-1604.
- Tab D replaces 7-2003.47, as contained in DAC 76-25, except that the "Buy American-Balance of Payments Program Certificate (1980 OCT)" is retained as 7-2003.47(a). A new "Buy American-Trade Agreements-Balance of Payments Program Certificate (1981 JAN)" is added as 7-2003.47(b).

Your comments (25 copies) on the attached coverage are requested within 120 days from the date of this letter.

Sincerely,

James T Brannan

JAMES T. BRANNAN
Director
Defense Acquisition
Regulatory Council

Attachments
Tabs A through D

Part 16 -- Purchases Under the Trade Agreements Act of 1979

6-1600 Scope of Part. This Part sets forth additional policies and procedures peculiar to acquisitions subject to the Agreement on Government Procurement and the Trade Agreements Act of 1979 (see Public Law 96-39; 19 U.S.C. 2501 et seq.).

6-1601 Definitions.

(a) Designated country means a country or instrumentality designated pursuant to the Act and listed below:

Austria	France	Niger
Bangladesh	Gambia	Norway
Belgium	Guinea	Rwanda
Benin	Haiti	Singapore
Bhutan	Hong Kong	Somalia
Botswana	Ireland	Sweden
Burundi	Italy	Switzerland
Canada	Japan	Western Samoa
Cape Verde	Lesotho	Sudan
Central African Republic	Luxembourg	Tanzania U.R.
Chad	Malawi	Uganda
Comoros	Maldives	United Kingdom
Denmark	Mali	Upper Volta
Federal Republic of Germany	Nepal	Yemen AR
Finland	Netherlands	

(b) Designated country end product means an article that (i) is wholly the growth, product or manufacture of the designated country, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character or use distinct from that of the article or articles from which it was so transformed. The term "designated country end product" includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts per se.

(c) Eligible product means a designated country end product listed at 6-1607.

6-1602 Policy.

(a) Offers of an eligible product with a total value of $196,000 or more are to be evaluated without regard to restrictions of the Buy American Act and Balance of Payments Program for such product.

(b) Except where waived pursuant to Sections 302(b)(2) or (3) of the Act, there shall be no purchase of an end product with a total value of $196,000 or more listed at 6-1607 which is the product of a country listed below:

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(c) No requirement for eligible products shall be divided with the intent of reducing the value of the resulting offers below $196,000.

6-1603 Exceptions. This Part does not apply to:

(i) eligible products offered at a price below $196,000;

(ii) products of countries not listed in 6-1601(a) or barred by 6-1602(b);

(iii) purchases under small or small disadvantaged business preferences programs;

(iv) purchases of arms, ammunition, war materials or purchases indispensable for national security or national defense purposes including purchases from foreign sources where prohibited by the Department of Defense annual appropriations act (see 6-302). The products listed at 6-1607 generally do not come under this exception, but in the event a Department considers an individual acquisition of such a listed product to be a purchase "indispensable for national security or national defense purposes," and appropriate for exclusion from the provisions of this Part, a request with supporting rationale shall be submitted in accordance with Departmental procedures for approval by DUSDRE(AP) or his designee.

(v) construction contracts;

(vi) service contracts (but not those services incidental to the purchase of eligible products, provided that the value of such service is not greater than the value of the product);

(vii) research and development contracts;

(viii) purchases by the Corps of Engineers;

(ix) purchases of items for resale;

(x) purchases pursuant to Section V, Part 4, Procurement from Federal Prisons, Inc., and Part 5, Procurement from the Blind and Other Severely Handicapped;

(xi) lease or rental agreements; and

(xii) purchases for agencies not listed in Executive Order 12260, dated 31 December 1980.

6-1604 Labor Surplus Area Set-Asides. When responsive offers are received for an eligible product, labor surplus area preference shall be accorded only to small business concerns (see 7-2003.5).

6-1605 Procedures for the Purchase of Products Listed at 6-1607. When the proposed acquisition for a listed product is estimated to be $196,000 or more and not otherwise exempted by 6-1603, the following procedures shall apply:

(a) Consistent with user requirements, a minimum of 30 days from the date of the issuance of the solicitation to receipt of offers is required for offers of products listed at 6-1607.

(b) Under no circumstances will technical requirements be imposed solely for the purpose of precluding the acquisition of products listed at 6-1607 from designated countries.

(c) Proposals in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness whose name shall be recorded in the file.

(d) The term "promptly," as used in 2-408.1 and 3-508.3(a), shall, for purposes of this Part, be construed to mean "within seven days."

6-1606 Required Clauses. Where this Part applies, each solicitation and resulting contract for a product(s) listed at 6-1607 shall contain the clause at 7-104.3(b) and the solicitation shall contain the certificate at 7-2003.47(b). A contracting officer shall rely on the offeror's certification as submitted.

6-1607 List of Products. The following list of items are arranged according to their Federal Supply Classification. If an item is not listed below, this Part 16 does not apply.

	FSC Category/Description
22	Railway Equipment
23	Motor Vehicles, Trailers, and Cycles (except 2310 and 2350)
24	Tractors
25	Vehicular Equipment Components
26	Tires and Tubes
29	Engine Accessories
30	Mechanical Power Transmission Equipment
32	Woodworking Machinery and Equipment
34	Metalworking Machinery (except 3408, 3410-3419, 3426, 3433, 3441-3443, 3446, 3448, 3449, 3460, 3461)
35	Service and Trade Equipment
36	Special Industry Machinery (except 3690)
37	Agricultural Machinery and Equipment
38	Construction, Mining, Excavating, and Highway Maintenance Equipment
39	Materials Handling Equipment
40	Rope, Cable, Chain and Fittings
41	Refrigeration and Air Conditioning Equipment
42	Fire Fighting, Rescue and Safety Equipment
43	Pumps and Compressors
44	Furnace, Steam Plant and Drying Equipment (except 4470)
45	Plumbing, Heating and Sanitation Equipment
46	Water Purification and Sewage Treatment Equipment
47	Pipe, Tubing, Hose and Fittings
48	Valves
49	Maintenance and Repair Shop Equipment (except 4920-4927, 4931-4935, 4960)
52	Measuring Tools
53	Hardware and Abrasives
54	Prefabricated Structures and Scaffolding
55	Lumber, Millwork, Plywood and Veneer
56	Construction and Building Materials
61	Electric Wire, and Power and Distribution Equipment
62	Lighting Fixtures and Lamps
63	Alarm and Signal Systems
65	Medical, Dental, and Veterinary Equipment and Supplies
66	Instruments and Laboratory Equipment (except 6645)
67	Photographic Equipment
68	Chemicals and Chemical Products

69	Training Aids and Devices
70	General Purpose ADPE, Software, Supplies and Support Equipment
71	Furniture
72	Household and Commercial Furnishings and Appliances
73	Food Preparation and Serving Equipment
74	Office Machines, Visible Record Equipment and ADP Equipment
75	Office Supplies and Devices
76	Books, Maps and Other Publications
77	Musical Instruments, Phonographs, and Home Type Radios
78	Recreational and Athletic Equipment
79	Cleaning Equipment and Supplies
80	Brushes, Paints, Sealers and Adhesives
81	Containers, Packaging and Packing Supplies (except 8140)
8460	Luggage
85	Toiletries
87	Agricultural Supplies
88	Live Animals
91	Fuels, Lubricants, Oils and Waxes
93	Non-metallic Fabricated Materials
94	Non-metallic Crude Materials
96	Ores, Minerals and their Primary Products
99	Miscellaneous

7-104.3 Buy American Act, Trade Agreements Act, and the Balance of Payments Program. In accordance with Section VI, insert one of the following clauses.

(a) Buy American Act and the Balance of Payments Program. Except as provided in (b) below, the following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), except as cited in 6-103.4, 6-103.7, and 6-803.2(a)(i)-(xi).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(Note: This is the clause at 7-104.3 in DAC 76-25; it is not reprinted here.)

(b) Buy American Act, Trade Agreements Act, and the Balance of Payments Program. The following clause may be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), except as cited in DAR 6-103.4, 6-103.7, and 6-803.2(a)(i)-(xi), and shall be inserted in all contracts subject to the Trade Agreements Act in accordance with DAR 6-1606.

BUY AMERICAN ACT, TRADE AGREEMENTS ACT, AND THE BALANCE OF PAYMENTS PROGRAM (1981 JAN)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d), the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products or as designated country end products. For the purpose of this clause--

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components, and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that is would be inconsistent with the public interest to apply the restrictions of the Buy American Act (DAR 6-104.4).

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country; or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country; or (B) an end product manufactured in an FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DAR 6-1310.3(b)(1).

(ix) "Defense Cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(x) "Designated country end product" means an item listed at DAR 6-1607 that (i) is wholly the growth, product, or manufacture of the designated country; or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article or commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts per se.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products, unless, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act, Trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product or a designated country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause; however, Contractors may not supply an end product with a total value of $196,000 or more listed at DAR 6-1607 from a country listed at DAR 6-1602(b).

(c) Offers will be evaluated in accordance with the policies and procedures of DAR Section VI.

(End of clause)

DAR 7-2003.5 Changes

Make the following pen and ink changes to DAR 7-2003.5, Notice of LSA Set-Asides:

1. Change the title of the clause at 7-2003.5(a) to read as follows:

   NOTICE OF LABOR SURPLUS AREA SET-ASIDE (1981 JAN)

2. Change the title of the clause at 7-2003.5(b) to read as follows:

   NOTICE OF LABOR SURPLUS AREA SET-ASIDE - ALTERNATE (1981 JAN)

3. Insert an asterisk (*) at the end of the sentence following "Group 2" and "Group 4" in paragraph (b)(2) of the clause at 7-2003.5(a) and at 7-2003.5(b), and add the following note at the end of each clause:

   * When responsive offers are received offering an eligible product listed in DAR Section VI, Part 16, priority for award shall exclude Group 2; and Group 4 shall be titled: "Other business concerns."

7-2003.47 Buy American - Trade Agreements - Balance of Payments Program Certificate.

(a) Insert the following in all solicitations and resultant contracts in which the Buy American Act and Balance of Payments Program clause at 7-104.3(a) is used.

BUY AMERICAN - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1980 OCT)

(Note: This is the certificate at 7-2003.47 in DAC 76-25; it is not reprinted here.)

(b) Insert the following in all solicitations and resultant contracts in which the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause at 7-104.3(b) is used.

BUY AMERICAN - TRADE AGREEMENTS - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1981 JAN)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

Excluded End Products

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

(List as necessary)

(b) Offers will be evaluated by giving certain preferences to domestic end products, qualifying country end products, and designated country end products over other end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or designated country end products, or they will be deemed neither qualifying country end products nor designated country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program." [_____]
(Insert line item no.)

(ii) The offeror certifies that the following supplies qualify as "FMS/Offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program," if the Government makes the necessary waivers.

[_____]
(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

[_____]
(Insert line item no.)

(iv) The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

[_____]
(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of DAR Section VI.

(End of certificate)

N A S A - NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Washington, D.C.

February 2, 1981

HP-1

TO: All Procurement Officers

FROM: H/Director of Procurement

SUBJECT: NASA Procurement Notice No. 81-2, Purchases Under the Trade Agreements Act of 1979

NPR REF: 6.1600 and 6.104

PURPOSE: This Notice provides regulatory coverage and clauses which are consistent with the Trade Agreements Act of 1979, as implemented by Executive Order 12260, dated December 31, 1980.

GUIDANCE: Pending a formal change to the NASA PR, the following additions and changes are incorporated into the specified paragraphs of the NASA PR:

TAB A - Incorporate as Part 6, Subpart 16
TAB B - Replaces 6.104-5
TAB C - Make the indicated pen and ink changes
TAB D - Replaces 6.104-3

EFFECTIVE DATE: This Notice is effective on January 12, 1981, and will remain in effect until replaced by a formal change to the NASA Procurement Regulations.

HEADQUARTERS CONTACT: Questions or comments should be addressed to W. F. Crawford, Code HP-1, (202) 755-2262.

S. J. Evans

Enclosures

Subpart 16 -- Purchases Under The Trade Agreements Act of 1979

6.1600 Scope of Subpart. This Subpart sets forth additional policies and procedures peculiar to acquisitions subject to the Agreement on Government Procurement and Trade Agreements Act of 1979 (see P.L. 96-39; 19 U.S.C. 2501 et seq.).

6.1601 Definitions.

(a) Designated country means a country or instrumentality designated pursuant to the Act and listed below:

Austria	France	Niger
Bangladesh	Gambia	Norway
Belgium	Guinea	Rwanda
Benin	Haiti	Singapore
Bhutan	Hong Kong	Somalia
Botswana	Ireland	Sweden
Burundi	Italy	Switzerland
Canada	Japan	Western Samoa
Cape Verde	Lesotho	Sudan
Central African Republic	Luxembourg	Tanzania U.R.
Chad	Malawi	Uganda
Comoros	Maldives	United Kingdom
Denmark	Mali	Upper Volta
Federal Republic of Germany	Nepal	Yemen AR
Finland	Netherlands	

(b) Designated country end product means an article that (i) is wholly the growth, product or manufacture of the designated country, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term "designated country end product" includes services (except transportation services) incidental to its supply provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts per se.

6.1602 Policy.

(a) Offers of a designated country end product with a total value of $196,000 or more are to be evaluated without regard to restrictions of the Buy American Act.

(b) Except where waived pursuant to Section 302(b)(2) of the Act, there shall be no purchase of an end product with a total value of $196,000 or more which is the product of a country listed below:

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(c) No requirement shall be divided with the intent of reducing the value of the resulting offers below $196,000.

(d) The requirement of Subpart 7 that the responsibility for foreign contract procurement be centralized at NASA Headquarters does not apply to acquisitions that are subject to this subpart. However, each buying office (including JPL) shall coordinate with Headquarters, Division of International Affairs (Code LI-15), before awarding a contract for a designated country end product.

6.1603 Exceptions. This subpart does not apply to:

(i) Products offered at a price below $196,000;

(ii) products of countries not listed in 6.1601(a) or barred by 6.1602(b);

(iii) purchases under small or small disadvantaged business preferences programs;

(iv) purchases of arms, ammunition, war materials or purchases indispensable for national security or national defense purposes. If a buying office considers an individual acquisition to be a purchase "indispensable for national security or national defense purposes," and appropriate for exclusion from the provisions of this Subpart, a request with supporting rationale shall be submitted to Headquarters, Code L, Office of External Relations, for coordination with the Office of the U.S. Trade Representative.

(v) construction contracts;

(vi) service contracts (but not those services incidental to the purchase of products, provided that the value of the service is not greater than the value of the product);

(vii) research and development contracts;

(viii) purchases by the Corps of Engineers;

(ix) purchases of items for resale;

(x) purchase pursuant to Part 5, Subpart 4,

Procurement from Federal Prisons Industries,Inc.and Subpart 5, Procurement From the Severely Handicapped;

(xi) lease or rental agreements; and

(xii) purchases for agencies not listed in Executive Order 12250 dated December 31, 1980. (Agencies listed in the Executive Order are in Attachment 1.)

6.1604 Labor Surplus Area Set-Asides. When responsive offers are received for a product, labor surplus area preference shall be accorded only to small business concerns (see 1.604-2(b)(1)).

6-1605 Procedures for Solicitation and Purchases. When the proposed acquisition is estimated to be $196,000 or more and not otherwise exempted by 6.1603, the following procedures shall apply:

(a) Consistent with user requirements, a minimum of 30 days from the date of the issuance of the solicitation to receipt of offers is required.

(b) Under no circumstances will technical requirements be imposed solely for the purpose of precluding the acquisition of products from designated countries.

(c) Proposals in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness whose name shall be recorded in the file.

(d) The term "promptly," as used in 2.406-1, 3.106-3, and 3.804-3, shall, for purposes of this Subpart, be construed to mean "within seven days."

(e) Solicitations shall contain a requirement that offers submitted in response to this solicitation shall be based on U.S. dollars and in the English language.

(f) Solicitations will require applicable duty charges to be included in the offered price, whether or not duty free certificates are obtained. Duty charges will be included in the price evaluation.

6.1606 Required Clauses. When this Subpart applies, each solicitation and resulting contract for a designated country end product shall contain the clause at 6.104-5 and the solicitation shall contain the certificate at 6.104-3. A contracting officer shall rely on the offeror's certification as submitted.

Government Agencies Subject to the Trade Agreements Act of 1979

1. ACTION
2. Administrative Conference of the United States
3. American Battle Monuments Commission
4. Board for Internal Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Community Services Administration
9. Consumer Product Safety Commission
10. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
11. Department of Commerce
12. Department of Defense (Excludes Corps of Engineers)
13. Department of Education
14. Department of Health and Human Services
15. Department of Housing and Urban Development
16. Department of the Interior (Excluded the Bureau of Reclamation)
17. Department of Justice
18. Department of Labor
19. Department of State
20. Department of the Treasury
21. Environmental Protection Agency
22. Equal Employment Opportunity Commission

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23. Executive Office of the President

24. Export-Import Bank of the United States

25. Farm Credit Administration

26. Federal Communications Commission

27. Federal Deposit Insurance Corporation

28. Federal Home Loan Bank Board

29. Federal Maritime Commission

30. Federal Mediation and Conciliation Service

31. Federal Trade Commission

32. General Services Administration (Purchases by the National Tool Center, and the Region 9 Office in San Francisco, California are not included)

33. Interstate Commerce Commission

34. Merit Systems Protection Board

35. National Aeronautics and Space Administration

36. National Credit Union Administration

37. National Labor Relations Board

38. National Mediation Board

39. National Science Foundation

40. National Transportation Safety Board

41. Nuclear Regulatory Commission

42. Office of Personnel Management

43. Overseas Private Investment Corporation

44. Panama Canal Commission

45. Railroad Retirement Board

46. Securities and Exchange Commission

47. Selective Service System

48. Smithsonian Institution

49. United States Arms Control and Disarmament Agency

50. United States International Communication Agency

51. United States International Development Cooperation Agency

52. United States International Trade Commission

53. Veterans Administration

Procurement from Federal Prisons Industries, Inc. and Subpart 5, Procurement From the Severely Handicapped;

(xi) lease or rental agreements; and

(xii) purchases for agencies not listed in Executive Order 12260 dated December 31, 1980. (Agencies listed in the Executive Order are in Attachment 1.)

6.1604 Labor Surplus Area Set-Asides. When responsive offers are received for a product, labor surplus area preference shall be accorded only to small business concerns (see 1.804-2(b)(1)).

6-1605 Procedures for Solicitation and Purchases. When the proposed acquisition is estimated to be $196,000 or more and not otherwise exempted by 6.1603, the following procedures shall apply:

(a) Consistent with user requirements, a minimum of 30 days from the date of the issuance of the solicitation to receipt of offers is required.

(b) Under no circumstances will technical requirements be imposed solely for the purpose of precluding the acquisition of products from designated countries.

(c) Proposals in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness whose name shall be recorded in the file.

(d) The term "promptly," as used in 2.406-1, 3.106-3, and 3.804-3, shall, for purposes of this Subpart, be construed to mean "within seven days."

(e) Solicitations shall contain a requirement that offers submitted in response to this solicitation shall be based on U.S. dollars and in the English language.

(f) Solicitations will require applicable duty charges to be included in the offered price, whether or not duty free certificates are obtained. Duty charges will be included in the price evaluation.

6.1606 Required Clauses. When this Subpart applies, each solicitation and resulting contract for a designated country end product shall contain the clause at 6.104-5 and the solicitation shall contain the certificate at 6.104-3. A contracting officer shall rely on the offeror's certification as submitted.

6.104-5 Contract Clause. In Accordance with the requirements of this Part 6, insert the following clause:

BUY AMERICAN ACT AND TRADE AGREEMENTS ACT (JAN 1981)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as designated country end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iii) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States; or (B) an end product manufactured in the United States if the cost of its designated country components, and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory

quality, or (B) as to which the Administrator has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(iv) "Foreign end product" means an end product other than a domestic end product.

(v) "Designated country end product" means an item that (i) is wholly the growth, product, or manufacture of the designated country , or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts per se.

(b) The contractor agrees that there will be delivered under this contract only domestic end products unless, in its offer, it specified delivery of foreign end products in the certificate entitled" Buy American Act and Trade Agreements Act Certificate." An offer certifying that a designated country end product will be supplied requires the contractor to supply a designated country end product, or, at the contractor's option, a domestic end product.

(c) Offers will be evaluated in accordance with the policies and procedures of NASA PR Part 6.

(End of Clause)

NASA PR 1.804-2 Changes

Make the following pen and ink changes to NPR 1.804-2, Notice of LSA Set-Asides:

1. Change the title of the clause at 1.804-2(b)(1) to read as follows:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (JAN 1981)

2. Insert an asterisk (*) at the end of the sentence following "Group 2," "Group 4," and "Group 6" in paragraph (a) of the clause and add the following note at the end of the clause:

*When responsive offers are received offering a designated country end product, priority for award shall exclude Groups 2, 4, and 6.

6.104-3 Certificate. Solicitations shall require that each offer include a certificate substantially as follows:

BUY AMERICAN - TRADE AGREEMENTS CERTIFICATE (JAN 1981)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Trade Agreements Act") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

(List as necessary)

(b) Offers will be evaluated by giving certain preferences to domestic end products and designated country end products over other end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are designated country end products or they will not be considered as such. Offerors must certify by inserting the applicable line item numbers in the brackets:

The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act and Trade Agreements Act." _____
(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of NASA PR Part 6.

(End of Certificate)