

SUBPART 225.4—TRADE AGREEMENTS

225.401 Definitions.

“Caribbean Basin country end product” includes petroleum or any product derived from petroleum.

“Eligible product” means, instead of the definition at FAR 25.401, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.403-70.

225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403-70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(c)(i) Except as provided in paragraphs (c)(ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872-1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii)(A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Fuel Supply Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

225.403 Exceptions.

(b) The evaluation preference for small disadvantaged businesses in Subpart 219.70 does not displace an offer of an eligible product.

(c)(1)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD(A&T)DP).

(B) The following national security/national defense exceptions do not require approval by USD(A&T)DP—

(1) Where purchase from foreign sources is restricted by the DoD annual Appropriations or Authorization Acts (see Subpart 225.70) or by the establishment of required sources of supplies and services under FAR Part 8.

(2) Where competition from foreign sources is restricted under the authority of FAR 6.302-3(a)(2)(i). Provide USD(A&T)DP a copy of the justification for restricting competition in accordance with FAR 25.402(e) and FAR 6.303-1(d).

(3) Where competition from foreign sources is restricted under Subpart 225.71.

(g)(4) In accordance with Section 8094 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139), the exception for petroleum and any product derived from petroleum does not apply.

225.403-70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.401 excludes those end products which are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.401 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products which are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

<u>FSG</u>	<u>Category/Description</u>
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
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
35	Service and trade equipment
36	Special industry machinery (except 3690)

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

- 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 Piping, tubing, hose, and fitting
- 48 Valves
- 49 Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960)
- 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 aircraft clocks under 6645) -
See FAR 25.401 exclusion of certain watches and watch parts for certain
Caribbean Basin countries
- 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)
- 84 Luggage (only 8460) - See FAR 25.401 for exclusion of luggage for
Caribbean Basin countries
- 85 Toiletries
- 87 Agricultural supplies
- 88 Live animals
- 91 Fuels, oils, and waxes
- 93 Nonmetallic fabricated materials
- 94 Nonmetallic crude materials
- 96 Ores, minerals, and their primary products
- 99 Miscellaneous

225.405 Procedures.

(d) The requirements of FAR 25.405(d) do not apply to offshore acquisitions or to Defense Fuel Supply Center post, camp, or station overseas requirements.

225.408 Solicitation provisions and contract clauses.

(a)(i) Use the provision at 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(ii) Except as provided in paragraph (a)(4) of this section, use the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(c)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(iii) Use the provision at 252.225-7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225-7021, Trade Agreements.

(iv) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program, when acquiring information technology products in Federal Supply Group 70 or 74. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(v)(A) Use the provision at 252.225-7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(B)(1) Use the basic provision when the basic clause at 252.225-7036 is used.

(2) Use the provision with its Alternate I when the clause at 252.225-7036 is used with its Alternate I.

(vi)(A) Use the clause at 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(c)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B)(1) Use the clause in all solicitations and contracts for the items listed at 225.403-70, when the estimated value is \$53,150 or more and the Trade Agreements

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(2) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$53,150.

(C) Application of the procedures in 225.402(a) and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.