

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

SUBPART 225.4--TRADE AGREEMENTS

(Revised April 13, 2000)

225.401 Exceptions.

(b)(i) 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(AT&L)DP).

(ii) The following national security/national defense exceptions do not require approval by USD(AT&L)DP:

(A) 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.

(B) Where competition from foreign sources is restricted under the authority of FAR 6.302-3(a)(2)(i). Provide USD(AT&L)DP a copy of the justification for restricting competition (see FAR 6.303-1(d)).

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

225.401-70 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 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.003 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 that 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) |
| 37 | Agricultural machinery and equipment |
| 38 | Construction, mining, excavating, and highway maintenance equipment |
| 39 | Materials handling equipment |

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- 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 25.003 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 25.003 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

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225.402 General.

(1) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401-70).

(2) See Subpart 225.5 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.

225.403 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 Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4) do not apply to offshore acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.