

**10 U.S.C. 2533a (the “Berry Amendment”) --
Conformed to SEC 822 of H.R. 1588**

Sec. 2533a. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT- Except as provided in subsections (c) through (i) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS- An item referred to in subsection (a) is any of the following:

(1) An article or item of--

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION- Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES- Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment located outside the United States for the personnel attached to such establishment.

(e) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING- Subsection (a) does not preclude the procurement of

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1 specialty metals or chemical warfare protective clothing produced outside the United States
2 if--

3
4 (1) such procurement is necessary--

5 (A) to comply with agreements with foreign governments requiring the
6 United States to purchase supplies from foreign sources for the purposes of
7 offsetting sales made by the United States Government or United States firms
8 under approved programs serving defense requirements; or

9 (B) in furtherance of agreements with foreign governments in which both
10 such governments agree to remove barriers to purchases of supplies produced in
11 the other country or services performed by sources of the other country; and
12

13 (2) any such agreement with a foreign government complies, where applicable,
14 with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776)
15 and with section 2457 of this title.
16

17 **(f) EXCEPTION FOR CERTAIN FOODS-** Subsection (a) does not preclude the
18 procurement of foods manufactured or processed in the United States.
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20 **(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER**
21 **NONAPPROPRIATED FUND INSTRUMENTALITIES-** Subsection (a) does not apply
22 to items purchased for resale purposes in commissaries, exchanges, or nonappropriated
23 fund instrumentalities operated by the Department of Defense.
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25 **(h) EXCEPTION FOR SMALL PURCHASES-** Subsection (a) does not apply to
26 purchases for amounts not greater than the simplified acquisition threshold referred to in
27 section 2304(g) of this title.
28

29 **(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR**
30 **PROCUREMENT OF COMMERCIAL ITEMS-** This section is applicable to contracts
31 and subcontracts for the procurement of commercial items notwithstanding section 34 of
32 the Office of Federal Procurement Policy Act (41 U.S.C. 430).
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34 **(j) GEOGRAPHIC COVERAGE-** In this section, the term `United States' includes the
35 possessions of the United States.