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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-110974

OCT 6 1977

The Honorable Stephen J. Solarz  
House of Representatives

Dear Mr. Solarz:

We refer to your letter of August 19, 1977, requesting a legal opinion on the Berry Amendment as it relates to the Buy American Act. Specifically, you asked:

"\* \* \* [I]f the Act is waived, for instance as set forth in the Memorandum of Understanding now existing between the United States and the United Kingdom for certain defense purchases, would the provisions of the Berry Amendment not also be automatically waived[?]"

The Buy American Act, 47 Stat. 1520, as amended, 41 U.S.C. 10a to 10d, was designed to accord preferential treatment to domestic producers and manufacturers in the case of purchases of materials and supplies by Federal agencies, as well as by construction contractors with such agencies. Exceptions to the requirement that purchases be made from domestic producers and manufacturers are (1) where the materials or supplies are to be used outside the United States; or (2) where the department or agency concerned determines that it would be inconsistent with the public interest or the cost of domestic supplies or materials would be unreasonable.

*Sub. 488 July 10, 1952*

The Berry Amendment was an amendment to the Department of Defense Appropriation Act of 1953, 66 Stat. 517, and generally prohibited procurements of materials made from non-domestic raw fibres. It was designed to "plug up a loophole in the Buy American Act by requiring that \* \* \* cotton and wool [would] only be considered American when the origin of the raw fibre, as well as each successive stage of manufacture, is domestic." Prior to enactment of the Berry Amendment, Armed Services Procurement Regulation (ASPR) § 6-103.1 had excluded raw fibre from the scope of the Buy American Act.

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The Berry Amendment was, however, applicable solely to the Department of Defense Appropriation Act of 1953, and it is only due to its inclusion in subsequent Defense Appropriation Acts that the provisions of the Berry Amendment are still in force today. While both the Buy American Act and the provisions of the Berry Amendment are concerned with granting preference to American manufacturers and producers, it must be remembered that they are distinct and separate pieces of legislation.

The protection afforded domestic suppliers and manufacturers by the provisions of the Berry Amendment is in addition to that afforded by the Buy American Act. Therefore, in view of the fact that the provisions of the Berry Amendment are not an amendment to the Buy American Act and must be reenacted annually in Department of Defense Appropriation Acts to remain in force, we are of the opinion that waiver of the Buy American Act would not cause the provisions of the Berry Amendment to automatically be waived.

We hope that this opinion will be of assistance to you.

Sincerely yours,

MILTON SOCOLAR

For Paul G. Dembling  
General Counsel

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We hope that the opinion will be of assistance to you.

**CONTRACTS**

- Buy American Act
- Defense Department procurements
- Waiver of Act
- Effect on Berry Amendment applicability

**APPROPRIATIONS**

- Defense Department
- Contracts
- Department of Defense Appropriation Act of 1953
- Berry Amendment
- Vis-a-vis Buy American Act