



# DEFENSE LOGISTICS AGENCY

AMERICA'S COMBAT LOGISTICS SUPPORT AGENCY



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# Agenda

- Definition
- Implementation
- Examples
- Exceptions
- DNAD
- Anti-Deficiency Act
- Buy American
- Berry vs Buy American
- Questions



# Berry Amendment

- 10 U.S.C § 2533a directs DoD to procure U.S. products and goods
- Applies to:
  - All purchases over the Simplified Acquisition Threshold of \$150,000 for: Foreign military sales, DoD Purchases for another agency, Other agency purchased for DoD
  - Applies to both end items & **components**
  - Food; Clothing; Tents; Tarpaulins; Covers; Cotton & Other Natural Fiber Products; Woven Silk & Woven Silk Blends and Spun Silk Yarn for cartridge Cloth; Synthetic Fabrics, Canvas Products, Wool, fiber or yarn or in fabrics, including in manufactured articles; Items of Individual Equipment, Federal supply Class 98465 containing any of the listed fibers or fabrics; Hand & Measuring tools; Makers of American Flags

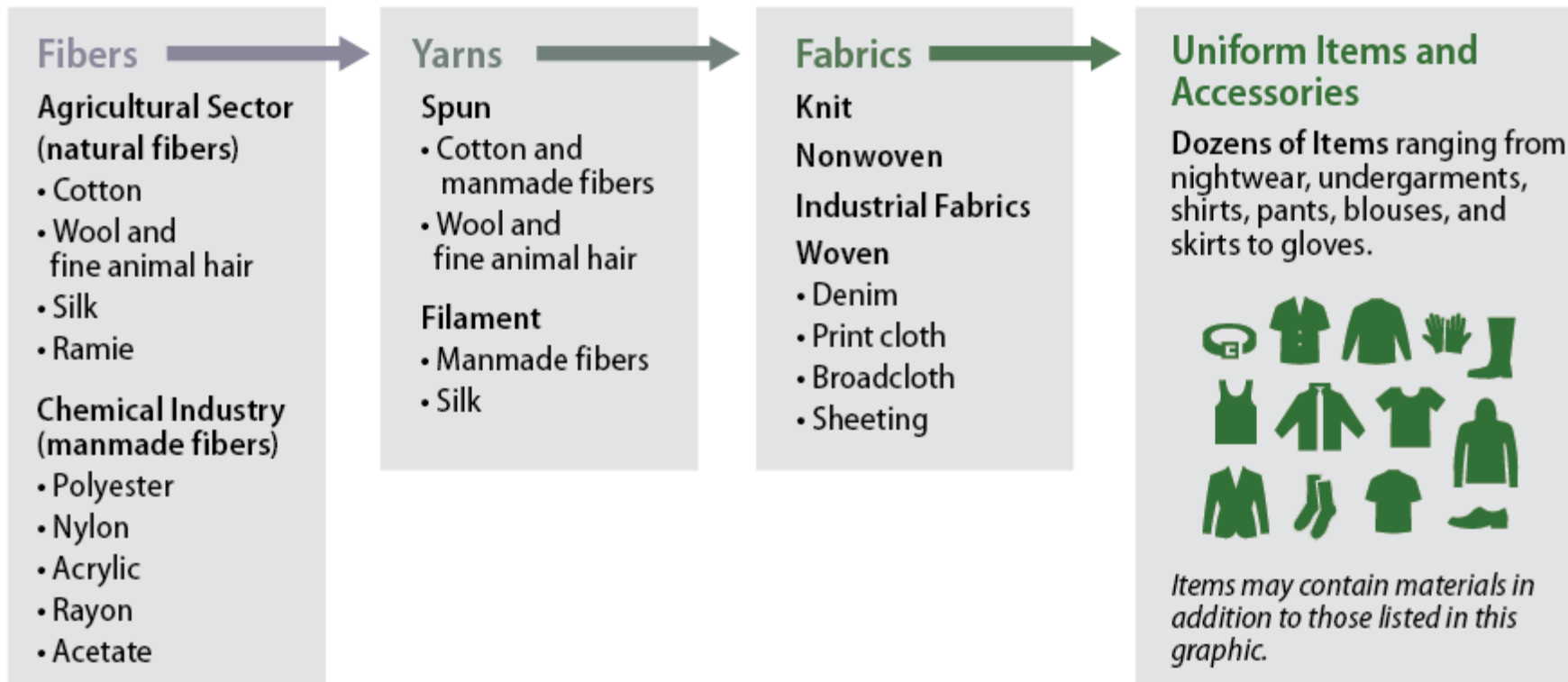


# Berry Amendment Implementation

- Clothing definition includes items materials and components normally associated with clothing --like zippers, buttons, and steel toes in boots.
- DFARS Section 225.7002
- Contract clauses are found at 252.225-7006, 252.225-7012 and 252.225-7015.



# Textile and Apparel Production Steps



- All components and subcomponents must be sources from a US firm
- Non-textile subcomponents must be from domestic sources



# Berry Example - Boot

Speedloop

Eyelet

Cattlehide

Midsole





# Common C&T Berry Exceptions

- Exceptions to these restrictions
  - Purchases under the Simplified Acquisition Threshold
  - Chemical warfare protective clothing from qualifying countries
  - Cotton & wool waste or byproducts for propellants & explosives
  - Para-aramid fibers & yarns (from qualifying countries only)



# Berry Amendment – Qualifying Countries

- Listed in DFARS 225.003(10)
- "Qualifying Country" is a foreign government with which DoD has signed a reciprocal defense procurement Memorandum of Understanding (MOU). DoD may only purchase certain items such as **Chemical warfare protective clothing and Para-aramid fibers** (cut resistant) from qualifying countries, see DFARS 225.7002-2(m)(2)





# Berry

## Domestic Non-Availability Determination

- Used when an item can not be grown, reprocessed, reused or produced in the US in the satisfactory quality and in sufficient quantity
- DFARS 225.7002-2(b) provides DNAD guidance



# Berry - DNAD

- Individuals Who Can Approve DNAD
  - Under Secretary of Defense, AT&L
  - Secretary of the Army
  - Secretary of the Navy
  - Secretary of the Air Force
  - Director of the Defense Logistics Agency
- General DNAD Issues
  - Market Research



# Approved DNADS in Effect for C&T

- Chemical and Oil Protective Nitrile Gloves
- Rayon Yarn
- Snap Fastener
- CR/CR2 8TZ Zipper Components



# Potential Penalties for Contracting Officers

- Berry prohibits the purchase of certain items with appropriated funds available to DoD
- It is a violation of the Berry Amendment if DoD pays for items that are non-compliant
- Penalties for Contracting Officers for violation of the Anti-Deficiency Act:
  - Fines up to \$5000.00
  - Imprisonment up to 2 years
  - Adverse personnel actions



# Buy American Statute

- 41 United States Code (U.S.C.) chapter 83, Buy American and
- Executive Order (EO) 10582
- Statute implemented in FAR Part 25
- requires the United States (U.S.) government to prefer U.S. made products when making purchases for public use
- The Buy American statute restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American statute uses a two-part test to define a domestic end product.



# Buy American Statue

- **Two-Part Test**

- In order to be considered a domestic end product, the item must meet two requirements:

- The article must be manufactured in the United States.
- The cost of all domestic components must exceed fifty percent of the cost of all the components.



# Buy American Statute

Buy American Exceptions	Buy American Waivers
Items below the micro-purchase threshold	Trade Agreements Act (TAA) <ul style="list-style-type: none"> <li>-World Trade Organization Government Procurement Agreement (WTO GPA)</li> <li>-least developed countries</li> <li>- Caribbean Basin Trade Initiative</li> </ul>
Items being outside the United States or Outlying Areas	
Non-availability of items <ul style="list-style-type: none"> <li>-at a reasonable quantity</li> <li>-at a reasonable quality</li> </ul>	
Unreasonable price or cost	Free Trade Agreements (FTA) <ul style="list-style-type: none"> <li>- North American Free Trade Agreement (NAFTA), Australia FTA, etc.</li> </ul>
Information technology that is considered a commercial item	
Inconsistent with public interest <ul style="list-style-type: none"> <li>- Department of Defense (DoD)</li> </ul>	
Qualified Countries	
Commissary Resale	



# Berry vs Buy American

<i>The Berry Amendment.....</i>	<i>The Buy American Statue.....</i>
DoD Specific	All federal agencies
Specifies covered items	Covers supply purchases
Applies over SAT \$150K	Applies over micro-purchase \$5K
<b>Requires 100% domestic content</b>	Requires 50% domestic content
No commercial exception for food, <b>textiles</b> or hand or measuring tools	Exception for commercial information technology
<b>Qualifying countries exception for chemical warfare protective clothing and para-aramid fibers</b>	Qualifying country exception applies to all purchases
Applies for supplies used worldwide	Applies to supplies used in U.S. only
<b>No contractor certification requirement</b>	<b>Requires contractor certification</b>





# Questions

