

NOTICE: WTO GPA Designated Countries Are Not Eligible for Exception to the Specialty Metals Restrictions.

On November 23, 2009, DoD published a notice in the Federal Register that updated the list of World Trade Organization Government Procurement Agreement countries that are “designated countries” in the trade agreements provisions and clauses in DFARS part 252. The notice precipitated several questions regarding the difference between a designated country and a qualifying country and eligibility for an exception to the Specialty Metals restrictions imposed by 10 USC 2533b.

Designated Country: The term “designated country” refers to trade agreements, specifically the World Trade Organization Government Procurement Agreement (WTO GPA). Eligible products from designated countries are entitled to nondiscriminatory treatment in acquisitions subject to the trade agreements. Further, in acquisitions that are subject to the World Trade Organization Government Procurement Agreement, there are purchase restrictions against buying products from non-designated countries. Most DoD acquisitions are NOT subject to trade agreements. Trade agreements only apply to acquisitions of items of the types listed at DFARS 225.401-70. A designated country does not provide any exception to the specialty metals restrictions.

Qualifying Country: A “qualifying country” is a country that has a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchase of supplies produced in the other country or services performed by sources of the other country. Qualifying countries are: Australia; Austria; Belgium; Canada; Denmark; Egypt; Finland; France; Germany; Greece; Israel; Italy; Luxembourg; Netherlands; Norway; Portugal; Spain; Sweden; Switzerland; Turkey; United Kingdom of Great Britain and Northern Ireland. They are listed at DFARS 225.003(10).

Exceptions to Specialty Metals Restrictions: Exceptions to Specialty Metals restrictions apply to Qualifying Countries, not to Designated Countries. DFARS 225.7003-3(b)(4) provides an exception to the specialty metals restrictions of 10 U.S.C. 2533b as follows: “Items listed in 225.7003-2(a), ***manufactured in a qualifying country or containing specialty metals melted or produced in a qualifying country***. This exception is based on the statutory exception at 10 U.S.C. 2533b(d), Exception Relating to Agreements with Foreign Governments.

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