

A spiral-bound notebook with a brown cover and a light beige, textured fabric-like surface. The spiral binding is on the left side. The text is centered on the page.

# Ball and Roller Bearings

Domestic Sourcing Restrictions  
(an overview)

# Overview

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- How Does Congress Restrict Sourcing?
- Specialty Metals: The Berry Amendment
- Ball and Roller Bearings:
  - 10 USC 2534
  - Annual Appropriations Act
- What is needed to approve non-domestic buys?

# The Constitution

- Article I, Sec 8: The Congress shall have Power To lay and collect Taxes ...
- Article I, Sec 9: No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; ...
- A Federal Agency may not make a payment from the Treasury unless Congress has made the funds available.

# Show Me the Money

Establishing a Program vs. Actually Funding It

- Authorization legislation is considered and reported by the committees with legislative jurisdiction over the particular subject matter.
- Appropriation bills are exclusively within the jurisdiction of the appropriations committees.

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# Limitations on the Use of Appropriated Funds

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- Purpose
- Time
- Amount

# Fiscal Handcuffs

- The Appropriations Clause has been described as the most important curb in the Constitution on Presidential Power.
- Gov't Employee who violates purpose, time, or amount restrictions may be subject to civil and/or criminal prosecution under the Anti-Deficiency Act.

# Berry Amendment



- 1940 Naval Appropriations Act:
- No part of this appropriation shall be available for any article of “food” not grown or produced in the United States.

# Berry Amendment Add-Ons: Frankenstein's Monster



- 1950: allowed foods to be “processed” in US (jams, jellies, ...)
- 1953: cotton/wool
- 1956: silk
- 1967: synthetic fabrics
- 1973: specialty metals (including stainless steel flatware)
- 1978: protective clothing
- 1988: tents

# Specialty Metals

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- Steel if it contains manganese, silicon, copper, aluminum, chromium, nickel, titanium, tungsten...;
- Metal alloys consisting of nickel, iron-nickel, cobalt base alloys;
- Titanium and titanium alloys;
- Zirconium and zirconium base alloys.

# When Does Specialty Metals Apply?

- Only procurements above the Simplified Acquisition Threshold (currently \$100,000)
- Basic or Alt I?
- Basic does not flow down requirement to subs; Alt I does.
- Aircraft; Missile and Space Systems; Ships; Tank-automotive; Weapons; Ammunition. (Alt I).

# What Does the Specialty Metals Clause Require?

- Contractor agrees that any specialty metals incorporated in articles delivered under the contract will be melted in the US (for Alt I, would include subs).
- Exception: Melted in a Qualifying Country or is incorporated in an article manufactured in a Qualifying Country.

# Ball and Roller Bearing Restrictions

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- If one is good: two must be better.
- Two separate Congressional restrictions on the purchase of ball and roller bearings:
  - Authorization Act restriction
  - Appropriation Act restriction
- Need waivers from both to acquire nondomestic ball and roller bearings.



# Bearing components defined:

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- Bearing element;
- Retainer;
- Inner race; or
- Outer race.


# Authorization Act restriction:

- 1995 DoD Authorization Act
- Codified at 10 USC 2534
- Delegated waiver authority



# Appropriations Act restriction:

- 1996 DoD Appropriations Act (and subsequent years)
- Requires Secretary of Military Department to certify to House and Senate Appropriations Committee that no domestic sources meet DoD needs.
- Applies to bearings purchased as end items.
- No dollar threshold exclusion- absolute prohibition unless waiver is granted.



# Why is the waiver process at a higher level today than it was previously?

- DAR Council created commercial item exception; Congress took away the commercial item exception in 2000.
- Berets (or the lack thereof).
- OSD level must now approve waivers from both DoD Appropriations Act ball and Roller Bearing restriction and Specialty Metal restriction.