

111TH CONGRESS  
1ST SESSION

# H. R. 3116

To prohibit the Department of Homeland Security from procuring certain items directly related to the national security unless the items are grown, reprocessed, reused, or produced in the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 7, 2009

Mr. KISSELL introduced the following bill; which was referred to the  
Committee on Homeland Security

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## A BILL

To prohibit the Department of Homeland Security from procuring certain items directly related to the national security unless the items are grown, reprocessed, reused, or produced in the United States, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Berry Amendment Ex-  
5       tension Act”.

1 **SEC. 2. BUY AMERICAN REQUIREMENT IMPOSED ON DE-**  
2 **PARTMENT OF HOMELAND SECURITY; EXCEP-**  
3 **TIONS.**

4 (a) IN GENERAL.—Subtitle H of title VIII of the  
5 Homeland Security Act of 2002 (6 U.S.C. 451 et seq.)  
6 is amended by adding at the end the following new section:

7 **“SEC. 890. BUY AMERICAN REQUIREMENT; EXCEPTIONS.**

8 “(a) REQUIREMENT.—Except as provided in sub-  
9 sections (c) through (e), the Secretary may not procure  
10 an item described in subsection (b) if the item is not  
11 grown, reprocessed, reused, or produced in the United  
12 States.

13 “(b) COVERED ITEMS.—

14 “(1) IN GENERAL.—An item referred to in sub-  
15 section (a) is any item described in paragraph (2),  
16 if the item is directly related to the national security  
17 interests of the United States.

18 “(2) ITEMS DESCRIBED.—An item described in  
19 this paragraph is any article or item of—

20 “(A) clothing and the materials and com-  
21 ponents thereof, other than sensors, electronics,  
22 or other items added to, and not normally asso-  
23 ciated with, clothing (and the materials and  
24 components thereof);

25 “(B) tents, tarpaulins, or covers;

1           “(C) cotton and other natural fiber prod-  
2           ucts, woven silk or woven silk blends, spun silk  
3           yarn for cartridge cloth, synthetic fabric or  
4           coated synthetic fabric (including all textile fi-  
5           bers and yarns that are for use in such fabrics),  
6           canvas products, or wool (whether in the form  
7           of fiber or yarn or contained in fabrics, mate-  
8           rials, or manufactured articles); or

9           “(D) any item of individual equipment  
10           manufactured from or containing such fibers,  
11           yarns, fabrics, or materials.

12           “(c) AVAILABILITY EXCEPTION.—Subsection (a)  
13           does not apply to the extent that the Secretary determines  
14           that satisfactory quality and sufficient quantity of any  
15           such article or item described in subsection (b)(2) grown,  
16           reprocessed, reused, or produced in the United States can-  
17           not be procured as and when needed.

18           “(d) EXCEPTION FOR CERTAIN PROCUREMENTS  
19           OUTSIDE THE UNITED STATES.—Subsection (a) does not  
20           apply to the following:

21           “(1) Procurements by vessels in foreign waters.

22           “(2) Emergency procurements.

23           “(e) EXCEPTION FOR SMALL PURCHASES.—Sub-  
24           section (a) does not apply to purchases for amounts not

1 greater than the simplified acquisition threshold referred  
2 to in section 2304(g) of title 10, United States Code.

3 “(f) APPLICABILITY TO CONTRACTS AND SUB-  
4 CONTRACTS FOR PROCUREMENT OF COMMERCIAL  
5 ITEMS.—This section is applicable to contracts and sub-  
6 contracts for the procurement of commercial items not-  
7 withstanding section 34 of the Office of Federal Procure-  
8 ment Policy Act (41 U.S.C. 430).

9 “(g) GEOGRAPHIC COVERAGE.—In this section, the  
10 term ‘United States’ includes the possessions of the  
11 United States.

12 “(h) NOTIFICATION REQUIRED WITHIN 7 DAYS  
13 AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS AP-  
14 PLIED.—In the case of any contract for the procurement  
15 of an item described in subsection (b)(2), if the Secretary  
16 applies an exception set forth in subsection (c) with re-  
17 spect to that contract, the Secretary shall, not later than  
18 7 days after the award of the contract, post a notification  
19 that the exception has been applied.

20 “(i) TRAINING.—

21 “(1) IN GENERAL.—The Secretary shall ensure  
22 that each member of the acquisition workforce who  
23 participates personally and substantially in the ac-  
24 quisition of textiles on a regular basis receives train-

1 ing on the requirements of this section and the regu-  
2 lations implementing this section.

3 “(2) INCLUSION OF INFORMATION IN NEW  
4 TRAINING PROGRAMS.—The Secretary shall ensure  
5 that any training program for the acquisition work-  
6 force developed or implemented after the date of the  
7 enactment of this section includes comprehensive in-  
8 formation on the requirements described in para-  
9 graph (1).

10 “(j) CONSISTENCY WITH INTERNATIONAL AGREE-  
11 MENTS.—

12 “(1) IN GENERAL.—No provision of this section  
13 shall apply to the extent the Secretary, in consulta-  
14 tion with the United States Trade Representative,  
15 determines that it is inconsistent with United  
16 States obligations under an international agreement.

17 “(2) REPORT.—The Secretary shall submit a  
18 report each year to the Committee on Homeland Se-  
19 curity of the House of Representatives containing,  
20 with respect to the year covered by the report—

21 “(A) a list of each provision of this section  
22 that did not apply during that year pursuant to  
23 a determination by the Secretary under para-  
24 graph (1); and

1           “(B) a list of each contract awarded by the  
2           Department of Homeland Security during that  
3           year without regard to a provision in this sec-  
4           tion because that provision was made inappli-  
5           cable pursuant to such a determination.”.

6           (b) EFFECTIVE DATE.—Section 890 of the Home-  
7           land Security Act of 2002, as added by subsection (a),  
8           shall apply with respect to contracts entered into by the  
9           Department of Homeland Security on and after the date  
10          occurring 180 days after the date of the enactment of this  
11          Act.

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