

Congress of the United States

Washington, DC 20515

June 19, 2009

The Honorable Robert M. Gates
Secretary of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

Dear Secretary Gates:

We are writing to request that you review the Department of Defense's continued application of congressionally authorized exceptions to the Berry Amendment relating to the procurement of para-aramid fibers and yarns, as well the procurement of fire-resistant rayon fiber, from foreign sources. The materials are used in the manufacture of body armor and fire-resistant uniforms, respectively.

The Berry Amendment requires the Department of Defense (DOD) to give preference in procurements to domestically produced, manufactured, or home-grown products—notably food, clothing, fabrics, and specialty metals. We believe that exceptions to this amendment allowing DOD purchases of para-aramid fibers and yarns, as well the procurement of fire-resistant rayon fiber, from foreign sources are no longer warranted owing to the availability of suitable materials in today's U.S. marketplace. The recent use of these exceptions is having an adverse impact on U.S. manufacturers and has undercut our policy of maintaining a strong and viable defense industrial base.

In 1998, partially due to limited domestic competition and a reliance on sole-source contracts, a statutory exception was created to the Berry Amendment to allow for purchases of para-aramid fibers and yarns from foreign sources. The statutory exception is only applicable when the Department makes a determination that procurement of para-aramid fibers and yarns from domestic sources will result in sole-source contracts or subcontracts. As a result of the exemption, the Department's purchases of para-aramid fibers and yarns have become increasingly dependent on foreign suppliers over the last decade. The marketplace has changed significantly in the last decade, however, and a variety of suitable materials now exist domestically.

Similarly, in 2008 a statutory exception was created for fire-resistant rayon fiber for the production of uniforms. This exception allowed the Department to procure fire-resistant rayon fiber for uniforms from foreign suppliers if a determination was made that either fire-resistant rayon fiber was not available domestically, or procuring such fiber domestically would result in sole-source contracts.

In the short period during which this provision has been in effect, foreign suppliers have dramatically increased their market share. Currently, 90 percent of the fielded Flame Resistant Army Combat Uniforms are constructed of imported fiber.

While environmental and other concerns have caused domestic sources to forego production of fire-resistant rayon fiber for uniforms, there are a variety of other fire-resistant fibers in today's domestic marketplace—some of which have out-performed rayon in evaluations for Army uniforms. As a result, the "rayon" exception is not relevant and should not apply to future procurements.

Congress has given the Secretary of Defense discretion to determine whether either exception should be used. However, current law mandates an annual review by the Secretary of Defense. We believe that a departmental review will clearly document why these exceptions to the Berry amendment should no longer be applied for defense-related procurements. It is our strongly held view that the para-aramid fibers and yarns exception is no longer valid, and that the fire-resistant rayon fiber exception is no longer useful. For the reasons noted above, we urge you not to apply either Berry amendment exception to future procurements involving these items.

We look forward to working with you to advance a more balanced policy that both promotes competition and preserves our ability to maintain and grow our domestic defense capabilities. Thank you for your consideration of this request.

Sincerely,

J. Rudy Forbes

Les King

Robert A. Wittman

Bob Bennett

Doug Lamborn

Rob Bradley

Gene Taylor

Sam Rooney

Tom Wilson

Phil Kingray

Mike Mastaglio