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H. R. 5312

To limit the total value of Chinese goods that may be procured by the United States Government during a calendar year to not more than the total value of United States goods procured by the Chinese Government if any during the preceding calendar year, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2010

Mr. SCHAUER (for himself, Mr. MICHAUD, Mr. RYAN of Ohio, Ms. KAPTUR, Mr. KILDEE, Mr. JONES, Mr. HARE, Ms. SUTTON, and Ms. SHEA-PORTER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committees on Ways and Means and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To limit the total value of Chinese goods that may be procured by the United States Government during a calendar year to not more than the total value of United States goods procured by the Chinese Government if any during the preceding calendar year, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reciprocal Government
3 Procurement with China Creates American Jobs Act”.

4 **SEC. 2. FINDINGS AND STATEMENT OF POLICY.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) The purchase of government goods and
7 services is an important means through which the
8 government fulfills its constitutional duties to pro-
9 vide for the common defense and promote the gen-
10 eral welfare of the United States.

11 (2) American taxpayers expect that government
12 procurement serves the interests of all Americans.

13 (3) The United States and several of its trading
14 partners are signatories to the WTO Agreement on
15 Government Procurement, which holds that signato-
16 ries agree to certain restraints with regard to gov-
17 ernment procurement.

18 (4) However, the People’s Republic of China is
19 not a signatory to the Agreement on Government
20 Procurement, and that, accordingly, it is not a viola-
21 tion of that agreement for the Congress to establish
22 procurement policies as best suit the American pub-
23 lic interest with regard to Chinese goods.

24 (5) China has structured its government pro-
25 curement law to favor its domestic goods, as noted
26 in article 10 of such law.

1 (6) China has also recently announced a plan to
2 favor so-called “indigenous innovation” under which
3 the Chinese Government would expressly favor lo-
4 cally developed products and technologies.

5 (7) American companies have had little or no
6 success in accessing Chinese Government procure-
7 ment contracts, while Chinese companies have had
8 great success in selling goods for United States Gov-
9 ernment projects.

10 (b) STATEMENT OF POLICY.—Accordingly, it shall be
11 the policy of the United States to limit the total value of
12 Chinese goods that may be procured by the United States
13 Government during a calendar year to not more than the
14 total value of United States goods procured by the Chinese
15 Government if any during the preceding calendar year.

16 **SEC. 3. CERTIFICATION; PROHIBITION AND LIMITATION ON**
17 **UNITED STATES PROCUREMENT OF CHINESE**
18 **GOODS.**

19 (a) CERTIFICATION.—Not later than March 1 of each
20 year beginning in 2011, the Secretary of Commerce shall
21 submit to Congress a certification in writing that contains
22 the following:

23 (1) A determination of whether or not the Chi-
24 nese Government has prohibited the procurement of

1 United States goods by the Chinese Government
2 during the preceding calendar year.

3 (2) If the Chinese Government has not prohib-
4 ited the procurement of United States goods by the
5 Chinese Government during the preceding calendar
6 year, an identification of the total value of United
7 States goods procured by the Chinese Government
8 during the preceding calendar year, as determined
9 by the International Trade Administration under
10 section 4.

11 (b) PROHIBITION.—If the Secretary determines and
12 certifies to Congress under subsection (a)(1) that the Chi-
13 nese Government has prohibited the procurement of
14 United States goods by the Chinese Government during
15 the preceding calendar year, then—

16 (1) the head of each executive agency may not
17 award a contract for the procurement of Chinese
18 goods during the succeeding calendar year; and

19 (2) the Secretary of Transportation shall pro-
20 hibit a State or other entity from using funds made
21 available from the Highway Trust Fund or the Air-
22 port and Airway Trust Fund for the award of a con-
23 tract for the procurement of Chinese goods during
24 the succeeding calendar year.

25 (c) LIMITATION.—

1 (1) IN GENERAL.—If the Secretary determines
2 and certifies to Congress under subsection (a)(1)
3 that the Chinese Government has not prohibited the
4 procurement of United States goods by the Chinese
5 Government during the preceding calendar year,
6 then the total value of Chinese goods that may be
7 procured by the United States Government during
8 the succeeding calendar year may not exceed the
9 total value of United States goods procured by the
10 Chinese Government during the preceding calendar
11 year, as identified under subsection (a)(2).

12 (2) RULE OF CONSTRUCTION.—For purposes of
13 determining the total value of Chinese goods that
14 may be procured by the United States Government
15 during a calendar year under paragraph (1), the
16 total value of Chinese goods procured by a State or
17 other entity using funds made available from the
18 Highway Trust Fund or the Airport and Airway
19 Trust Fund during the preceding calendar year shall
20 be deemed to be Chinese goods procured by the
21 United States Government.

22 **SEC. 4. ITA PROGRAM AND NOTIFICATION.**

23 (a) PROGRAM.—The International Trade Administra-
24 tion shall establish a program—

1 (1) to identify the total value of United States
2 goods procured by the Chinese Government on an
3 annual basis, as required under section 3(a)(2), in-
4 cluding an accounting of the value of such procure-
5 ment; and

6 (2) to provide notification in accordance with
7 subsection (b).

8 (b) NOTIFICATION.—The International Trade Ad-
9 ministration shall publish notice in the Federal Register
10 on or as soon as practicable after the date on which the
11 total value of Chinese goods procured by the United States
12 Government equals 50 percent, 75 percent, and 100 per-
13 cent of the total value of United States goods procured
14 by the Chinese Government during the preceding calendar
15 year for purposes of complying with the limitation under
16 section 3(c).

17 **SEC. 5. DEFINITIONS.**

18 In this Act:

19 (1) CHINESE GOOD.—The term “Chinese good”
20 means a good that is the growth, product, or manu-
21 facture of the People’s Republic of China. A good
22 shall be determined to be the manufacture of the
23 People’s Republic of China for purposes of this para-
24 graph if the sum of—

1 (A) the cost or value of the materials pro-
2 duced in China, plus

3 (B) the direct costs of processing oper-
4 ations performed in China,

5 is not less than 50 percent of the appraised value of
6 such good at the time it is entered.

7 (2) CHINESE GOVERNMENT.—The term “Chi-
8 nese Government” means the central government of
9 the People’s Republic of China and any other gov-
10 ernmental entity, including—

11 (A) any agency or instrumentality of the
12 Chinese Government;

13 (B) any entity that is owned or controlled,
14 directly or indirectly, by the Chinese Govern-
15 ment; and

16 (C) any Chinese provincial or local govern-
17 mental entity.

18 (3) EXECUTIVE AGENCY.—The term “executive
19 agency” has the meaning given the term in section
20 4 of the Office of Federal Procurement Policy Act
21 (41 U.S.C. 403).

22 (4) SECRETARY.—The term “Secretary” means
23 the Secretary of Commerce.

24 (5) UNITED STATES GOOD.—The term “United
25 States good” means a good that is the growth, prod-

1 uct, or manufacture of the United States. A good
2 shall be determined to be the manufacture of the
3 United States for purposes of this paragraph if the
4 sum of—
5 (A) the cost or value of the materials pro-
6 duced in the United States, plus
7 (B) the direct costs of processing oper-
8 ations performed in the United States,
9 is not less than 50 percent of the appraised value of
10 such good at the time it is entered.

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