

**TITLE 49 - TRANSPORTATION**  
**SUBTITLE VII - AVIATION PROGRAMS**  
**PART E - MISCELLANEOUS**  
**CHAPTER 501 - BUY-AMERICAN PREFERENCES**

**§ 50104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities**

- (a) **Definition and Rules for Construing Section.**— In this section—
- (1) “project” has the same meaning given that term in section 47102 of this title.
  - (2) each foreign instrumentality and each territory and possession of a foreign country administered separately for customs purposes is a separate foreign country.
  - (3) an article substantially produced or manufactured in a foreign country is a product of the country.
  - (4) a service provided by a person that is a national of a foreign country or that is controlled by a national of a foreign country is a service of the country.
- (b) **Limitation on Use of Available Amounts.**—
- (1) An amount made available under subchapter I of chapter 471 of this title (except section 47127) may not be used for a project that uses a product or service of a foreign country during any period the country is on the list maintained by the United States Trade Representative under subsection (d)(1) of this section.
  - (2) Paragraph (1) of this subsection does not apply when the Secretary of Transportation decides that—
    - (A) applying paragraph (1) to the product, service, or project is not in the public interest;
    - (B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and
    - (C) the project cost will increase by more than 20 percent if the product or service is excluded.
- (c) **Decisions on Denial of Fair Market Opportunities.**— Not later than 30 days after a report is submitted to Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241 (b)), the Trade Representative, for a construction project of more than \$500,000 for which the government of a foreign country supplies any part of the amount, shall decide whether the foreign country denies fair market opportunities for products and suppliers of the United States in procurement or for United States bidders. In making the decision, the Trade Representative shall consider information obtained in preparing the report and other information the Trade Representative considers relevant.
- (d) **List of Countries Denying Fair Market Opportunities.**—
- (1) The Trade Representative shall maintain a list of each foreign country the Trade Representative finds under subsection (c) of this section is denying fair market opportunities. The country shall remain on the list until the Trade Representative decides the country provides fair market opportunities.
  - (2) The Trade Representative shall publish in the Federal Register—
    - (A) annually the list required under paragraph (1) of this subsection; and
    - (B) any modification of the list made before the next list is published.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1299, § 49104; renumbered § 50104 and amended Pub. L. 104–287, § 5(88)(D), (89), Oct. 11, 1996, 110 Stat. 3398.)

**Historical and Revision Notes**

**Pub. L. 103–272**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
49104(a)(1)		
(no source).		
49104(a)(2)– (4)		
49 App.:2226(d).		
Sept. 3, 1982, Pub. L. 97–248, 96 Stat. 324, § 533; added Dec. 30, 1987, Pub. L. 100–223, § 115, 101 Stat. 1505.		
49104(b)		
49 App.:2226(a).		
49104(c)		
49 App.:2226(b).		
49104(d)		
49 App.:2226(c).		

Subsection (a)(1) is added for clarity.

In subsection (b)(1), the words “subchapter I of chapter 471 of this title (except sections 47106 (d) and 47127)” are substituted for “Act” in section 533(a)(1) of the Airport and Airway Development Act of 1982, as added by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223, 101 Stat. 1505) to correct a mistake.

In subsection (b)(2), before clause (A), the words “with respect to the use of a product or service in a project” are omitted as surplus. In clause (B), the words “or service” are added for clarity and consistency in this section. In clause (C), the words “overall” and “contract” are omitted as surplus.

In subsection (c), the words “the date which is”, “the date on which”, “or not”, and “and equitable” are omitted as surplus.

In subsection (d)(1), the words “finds under subsection (c) of this section is denying fair market opportunities” are substituted for “with respect to which an affirmative determination is made under subsection (b)” for clarity.

In subsection (d)(2)(A), the word “entire” is omitted as surplus.

**Pub. L. 104–287, § 5(89)**

This makes a clarifying amendment to 49:50101(a) and (b)(3), 50102, 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 49:47106(d) was struck by section 108(1) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1573).

**Amendments**

1996—Pub. L. 104–287, § 5(88)(D), renumbered section 49104 of this title as this section.

Subsec. (b)(1). Pub. L. 104–287, § 5(89), substituted “section 47127” for “sections 47106 (d) and 47127”.