



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Washington, D.C. 20590

Subject: Buy America Requirements

Date: JUL 6 1989

From: Chief, Construction and Maintenance Division
Office of Highway Operations

Reply to
Attn of: HHO-32

To: Regional Federal Highway Administrators
Division Administrators
Federal Lands Highway Program Administrator

A recent meeting with a material supplier to discuss FHWA Buy America requirements has brought up several issues which we believe warrant further clarification to FHWA field offices and States. These issues include certification of steel, determining the cost of foreign steel, and impacts of international trade agreements.

Certification of Steel:

It has been alleged that domestically produced steel billets have been shipped overseas for extrusion and/or rolling, and then returned to the United States, certified as domestic, for use on Federal-aid projects. If this is being done, it is not in conformance with the Buy America requirements set forth in 23 CFR 635.410.

All manufacturing processes of the steel material in a product (i.e., smelting, and any subsequent process which alters the steel material's physical form or shape or changes its chemical composition) must occur within the United States to be considered of domestic origin. This includes processes such as rolling, extruding, machining, bending, grinding, and drilling.

State highway agencies are expected to provide sufficient oversight to ensure compliance with the Buy America provisions. If State procedures require a certification, it is recommended that the State adopt language for the certification emphasizing that all manufacturing processes have occurred in the United States.

Regarding the use of certifications to ensure compliance, the AASHTO Executive Committee on June 7, 1989, approved a proposed policy resolution on Buy America. The proposed resolution, which is now before AASHTO's policy committee for consideration, contains two position statements on certifications. First, that a certification should be required, "on all steel mill test reports," and second, step certification should be required, "from each supplier/fabricator on transfer of intermediate product, thereby generating a chain of custody documentation trail." While the FHWA does not

mandate that States must use a certification approach to ensure Buy America compliance, it is an effective method some States are using especially for incidental steel items. The certification approach AASHTO is developing should further the effectiveness of certification controls. If a State chooses to use certification to ensure compliance, we encourage it to consider AASHTO's approach.

Cost of Foreign Steel:

Section 635.410(b)(4) of Title 23 CFR permits a minimal amount of foreign steel to be incorporated into a Federal-aid project. This amount is defined as one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The cost of the foreign steel is defined as its value delivered to the project.

Apparently, there has been some confusion as to exactly how this value should be calculated, especially when: (1) domestic steel has been shipped to a foreign country to facilitate one or more manufacturing process and/or (2) a product has been fabricated with foreign steel components as well as other components. If steel billets produced in the United States are sent out of the country for a subsequent manufacturing process and then brought back into the United States, the full value of the steel as it reenters the country, including the original billet cost, is considered to be foreign. If foreign steel components are combined with other components into a fabricated and/or assembled composite product, the foreign steel content of the composite product is not only the value of the foreign steel components, but also the pro-rata value of the fabrication and assembly labor and overhead used in combining the foreign steel and other components into the finished composite product.

International Trade Agreements:

Congress has, in recent years, approved several trade agreements including the U.S.-Canada Free-Trade Agreement in 1988 (Pub. L. 100-449, 102 Stat. 1951 (1988)). While such agreements may impact direct Federal procurement actions taken pursuant to the Federal Acquisition Regulations (Title 48 CFR), they have no effect on the Federal-aid highway program. Therefore, the Buy America requirements of 23 CFR 635.410 are unaffected by any current foreign trade agreement.

Similarly, the "In-Bond" or "Maguilladora" program which established international commercial zones surrounding U.S.-Mexico border communities has no effect on the Federal-aid highway program. Any manufacturing process of steel material in Mexico will result in the steel material being considered a foreign material and subject to the requirements of 23 CFR 635.410.

Original Signed By
William A. Weseman

William A. Weseman