

Table of Contents

PART IX. RULES OF ORIGIN FOR SALES OF PRODUCTS TO THE UNITED STATES GOVERNMENT

CHAPTER 21. RULES OF ORIGIN FOR SALES OF PRODUCTS TO THE UNITED STATES GOVERNMENT

- § 21:1 Introduction
- § 21:2 The Buy American Act
- § 21:3 —The Buy American preference—Domestic end product defined—FAR
- § 21:4 — — —DFARS
- § 21:5 — — —Manufacture in the United States
- § 21:6 — — —Calculating component costs
- § 21:7 — — —Application of the Buy American preference
- § 21:8 —Exceptions and waivers under the Buy American Act—Statutory framework
- § 21:9 — — —Public interest exception under the FAR
- § 21:10 — — —Public interest exception under the DFARS
- § 21:11 — — —Non-availability
- § 21:12 The Trade Agreements Act—The TAA’s coverage
- § 21:13 —The TAA’s Rules of Origin—Regulatory standard
- § 21:14 —The TAA’s rules of Origin—Procedures
- § 21:15 — — —Judicial and administrative determinations
- § 21:16 Other restrictions
- § 21:17 Rules of origin under the American Recovery and Reinvestment Act of 2009—The statute imposes a Buy American requirement for construction contracts
- § 21:18 —The Buy America ARRA regulations clarify the statutory requirements
- § 21:19 Rules of origin under the Build America, Buy America Act
- § 21:20 —Requirements of the Act
- § 21:21 Buy America requirements in Federal Transit Administration grants
- § 21:22 Buy America requirements in federal transit administration procurements—The Federal Transit Administration imposes a general requirement that end products be manufactured in the United States using U.S.-Origin components
- § 21:23 Buy America requirements in Federal Transit Administration grants—Procurement of manufactured end products

- § 21:24 —The Buy America requirement is waived for computers, microcomputers, and microprocessors
- § 21:25 —The Buy America requirement is waived for rolling stock procurements
- § 21:26 Buy America requirements in Federal Transit Administration procurements—Additional Buy America waivers
- § 21:27 Buy America requirements in Federal Transit Administration grants—compatibility with BABA
- § 21:28 Buy America requirements in Federal Highway Administration grants
- § 21:29 Origin of products for sales under the foreign military financing program
- § 21:30 —Summary of Rules
- § 21:31 —The DSCA “manufactured and assembled” requirement
- § 21:32 —The domestic content requirement—In general
- § 21:33 — —Options for financing of foreign-origin content
- Appendix 21-A. Part 25—Foreign Acquisition
- Appendix 21-B. Part 52—Solicitation Provisions and Contract Clauses
- Appendix 21-C. Part 225—Foreign Acquisition
- Appendix 21-D. Rules of Origin for Sales of Products to the United States Government—Selected Cases, Decisions, and Rulings
- Appendix 21-E. Matter of Sikorsky Aircraft Corp.
- Appendix 21-F. Matter of A & D Machinery Co.
- Appendix 21-G. Matter of Alternative Contracting Enterprises, LLC; Pierce First Medical
- Appendix 21-H. Matter of Pierce First Medical; Alternative Contracting Enterprises, LLC—Reconsideration
- Appendix 21-I. Matter of Sea Box, Inc.
- Appendix 21-J. U.S. Customs and Border Protection Notice of Issuance of Final Determination Concerning Printer and Fax Machine
- Appendix 21-K. U.S. Customs and Border Protection Notice of Issuance of Final Determination Concerning Monochrome Laser Printers
- Appendix 21-L. U.S. Customs and Border Protection Notice of Issuance of Final Determination Concerning Multifunctional Digital Imaging Systems
- Appendix 21-M. Defense Federal Acquisition Regulation Supplement; Definitions of Component and Domestic Manufacture
- Appendix 21-N. FTA Ruling Letter to Security Industry Association re Internet Protocol Cameras (Dec. 21, 2016)
- Appendix 21-O. Defense Security Cooperation Agency; Guidelines

TABLE OF CONTENTS

for Foreign Military Financing of Direct
Commercial Contracts

PART X. TRANSPORTATION RELATED ISSUES

CHAPTER 22. FEDERAL BILLS OF LADING ACT

- § 22:1 Introduction
- § 22:2 The Federal Bills of Lading Act's coverage
- § 22:3 Definitions
- § 22:4 The carrier's delivery obligation
- § 22:5 Carrier's liability for misdelivered, damaged or missing
merchandise
- § 22:6 —Delivery contrary to instruction
- § 22:7 —Delivery of missing or damaged merchandise
- Appendix 22-A. Statutory Materials for the Federal Bills of Lading
Act
- Appendix 22-B. United States Case Law on the Federal Bills of
Lading Act

PART XI. JUDICIAL REVIEW AND ENFORCEMENT

CHAPTER 23. JUDICIAL ENFORCEMENT OF AGREEMENTS TO ARBITRATE INTERNATIONAL COMMERCIAL DISPUTES UNDER UNITED STATES LAW

- § 23:1 Overview
- § 23:2 Background: The Convention
- § 23:3 Basis for federal court jurisdiction
- § 23:4 Policy in favor of enforcing agreements to arbitrate, and
scope of federal court jurisdiction
- § 23:5 Relationship between Chapter 2 of the Federal Arbitration
Act and the Convention
- § 23:6 Determining whether a federal court has removal
jurisdiction under the Convention
- § 23:7 Determining whether to compel arbitration
- § 23:8 —Is it an International Arbitration under the Act?
- § 23:9 —Is there an arbitration agreement and is it enforceable?
- § 23:10 — —Determining whether there is an enforceable
agreement to arbitrate
- § 23:11 — —Parties covered by the arbitration agreement
- § 23:12 —Issues subject to arbitration
- § 23:13 — —Whether arbitration is contrary to public policy

- § 23:14 — —Whether the arbitration agreement covers a specific issue
- § 23:15 —Has a party waived its right to demand arbitration?
- § 23:16 —Has a party waived its right to object to arbitration?

CHAPTER 24. JUDICIAL CONFIRMATION OF FOREIGN ARBITRAL AWARDS

- § 24:1 Overview
- § 24:2 The Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- § 24:3 Federal court jurisdiction over confirmation of awards pursuant to the Convention
- § 24:4 Arbitral awards covered by the Convention
- § 24:5 —“International” nature of awards covered by the Convention
- § 24:6 —Requirement of a written arbitration agreement
- § 24:7 —Requirement for a final award
- § 24:8 Defenses to recognition and enforcement of an award—
There are limited grounds for not recognizing and enforcing an award
- § 24:9 —Judicial application of the Convention’s exceptions to enforcement—Incapacity of a party
- § 24:10 — —Lack of proper notice
- § 24:11 — —Errors in the arbitral body’s composition or procedure
- § 24:12 — —The subject matter of the difference is not capable of settlement by arbitration under the law of that country
- § 24:13 — —Recognition and enforcement contrary to public policy
- § 24:14 — —Award set aside or suspended
- § 24:15 — —Award not yet binding
- § 24:16 —Additional grounds for nonrecognition and enforcement
- § 24:17 — —Manifest disregard of the law
- § 24:18 — —Alleged procedural defects in the arbitral proceedings
- § 24:19 — —Arbitrators exceeding authority
- § 24:20 — —Miscellaneous reasons for nonrecognition
- § 24:21 Stay of proceedings

CHAPTER 25. RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENTS

- § 25:1 Introduction
- § 25:2 Background
- § 25:3 Uniform Foreign Money Judgments Recognition Act
- § 25:4 Uniform Foreign-Country Money Judgments Recognition Act
- § 25:5 Federal court jurisdiction over Uniform Act and Revised Act cases
- § 25:6 The Uniform Act and Revised Act do not apply to sister-state judgments

TABLE OF CONTENTS

§ 25:7	Procedural requirements
§ 25:8	The recognition/enforcement distinction
§ 25:9	Preclusive effect of foreign judgment
§ 25:10	Burden of proof in recognition actions
§ 25:11	Availability of enforcement of foreign judgment as a factor in evaluating forum non conveniens arguments
§ 25:12	Foreign judgments eligible for recognition and enforcement under the Uniform Act and Revised Act
§ 25:13	—The statutes require a foreign judgment that is “final and conclusive and enforceable where rendered”
§ 25:14	— —Is the foreign judicial decision a “judgment?”
§ 25:15	— —Is the foreign judgment “final and conclusive?”
§ 25:16	— —Is the foreign judgment “enforceable where rendered?”
§ 25:17	—The foreign judgment must grant or deny recovery of a sum of money
§ 25:18	—The foreign action must have been between the same parties in the action to recognize and enforce the judgment
§ 25:19	Mandatory grounds for not recognizing a foreign judgment
§ 25:20	—Non-Impartial foreign tribunals and lack of due process
§ 25:21	—Lack of personal jurisdiction over the defendant
§ 25:22	— —No personal jurisdiction on due process grounds
§ 25:23	— —Application of the enumerated bases for personal jurisdiction
§ 25:24	— — —Personal service in the foreign state
§ 25:25	— — —The defendant’s voluntary appearance in the foreign proceedings
§ 25:26	— — —The defendant’s previous consent to jurisdiction in the foreign court
§ 25:27	— — —Alternate grounds for personal jurisdiction
§ 25:28	Discretionary grounds for not recognizing or enforcing a foreign judgment
§ 25:29	—Did the defendant in the foreign court proceedings receive notice of the proceedings in sufficient time to enable him to defend?
§ 25:30	—Was the foreign judgment obtained by fraud?
§ 25:31	—Is the cause of action on which the judgment is based repugnant to public policy?
§ 25:32	—Was the foreign court proceeding contrary to an agreement that the dispute was to be settled otherwise than by proceedings in that court?
§ 25:33	—Does the foreign judgment conflict with another final and conclusive judgment?
§ 25:34	—Was the foreign court a seriously inconvenient forum for the trial of the action?
§ 25:35	—Was the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment?
§ 25:36	—Does the foreign court in which the judgment was rendered recognize judgments from the forum state?

- Appendix 25A. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

APPENDICES

- Appendix 2. World Bank Guidelines

Appendix 4. Multilateral Investment Treaties

- Appendix 4A. The Multilateral Agreement on Investment The MAI
Negotiating Text (as of 24 April 1998)

Appendix 5. OPIC

- Appendix 5A. OPIC Contract
Appendix 5B. OPIC Member States

Appendix 6. MIGA

- Appendix 6A. MIGA General Conditions of Guaranty
Appendix 6B. MIGA Member States
Appendix 6C. MIGA Rules of Arbitration

Appendix 7. ICSID

- Appendix 7A. ICSID Convention
Appendix 7B. ICSID Member States
Appendix 7C. ICSID Model Clauses

Appendix 8. New York Convention

- Appendix 8B. New York Convention Members
Appendix 9. Foreign Sovereign Immunities Act

Appendix 10. UN Conventions

- Appendix 10A. United Nations Convention on the Privileges and Immunities of the United Nations
Appendix 10B. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Appendix 10C. UNCITRAL Model Law on Electronic Commerce (1996)
Appendix 11. United Nations Convention on Contracts for the International Sale of Goods

Appendix 12. National Laws, Rules and Regulations—United States

- Appendix 12A. United States Court Law: Supreme Court Cases