

eral agencies for use in the United States except when domestic cost is unreasonable, domestic materials are not available in sufficient quantity or satisfactory quality, or domestic procurement is inconsistent with the public interest.³⁴

The unreasonable-cost exception has given rise to much controversy. Executive Order 10582 of December 17, 1954, which implements the "Buy American" Act, provides that domestic cost shall be considered unreasonable if it exceeds by 6 per cent the foreign bid price, including applicable duty. An additional 6 per cent or a total of 12 per cent applies if the domestic product is produced in an area of substantial unemployment or by a small business firm.

U.S. procuring agencies have generally used the 6/12 per cent differential. However, since July, 1962, the Defense Department has utilized a "national-interest" exception in the Executive Order and has applied higher differentials (50 per cent is used as a "bench mark") in order to lessen expenditures affecting the U.S. balance of payments.³⁵

As indicated above, the "Buy American" Act applies only to procurement for use in the United States. Procurement for use outside the United States in connection with military forces abroad and foreign aid programs has been more closely linked to U.S. purchases.³⁶ Other countries resort to the same practice. France, for example, ties substantially all of its foreign aid loans and grants to procurement within France. The EEC European Development Fund ties its assistance to procurement from Community sources.

Most industrial countries other than the United States are more subtle in granting preferences to domestic producers in

³⁴ Under international agreements the "Buy American" Act does not apply to certain military supplies when procured from Canada or to procurement in Panama for use in the Canal Zone.

³⁵ For a discussion of the "Buy American" Act and its early administration, see Laurence A. Knapp, "The Buy American Act: A Review and Assessment," *Columbia Law Review*, LXI (March, 1961).

³⁶ Most procurement for use outside the United States is by the Defense Department and the Agency for International Development (AID). In July, 1962, as part of the U.S. balance-of-payments program, the Defense Department increased the price preference given domestic producers in procurement for use overseas from 25 to 50 per cent. Subject to exceptions, AID requires that commodity procurement financed by loans under its assistance programs be made in the United States. Foreign procurement of commodities financed by AID grants is restricted to the United States and developing countries.