

CORRECTED VERSION

*John McCain*

PENDING

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To perfect the matter proposed to be stricken.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

**S. 2400**

To au	<b>AMENDMENT No. 3461</b>	ary
ar		ary
cc	By <i>Warner for McCain</i>	art-
m		for
st	To: <i>the language proposed to</i>	her
pl	<i>be stricken by Amdt</i>	

*No. 3197*

6-Page(s)

GPO: 2002 83-247(Mac)

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MCCAIN *and Mr. Warner*

Viz:

- 1 In lieu of the matter proposed to be stricken, insert
- 2 the following:
- 3 **SEC. 842. WAIVER AUTHORITY FOR DOMESTIC SOURCE OR**
- 4 **CONTENT REQUIREMENTS.**
- 5 (a) AUTHORITY.—Subchapter V of chapter 148 of
- 6 title 10, United States Code, is amended by adding at the
- 7 end the following new section:

1 **“§ 2539c. Waiver of domestic source or content re-**  
2 **quirements**

3 “(a) **AUTHORITY.**—Except as provided in subsection  
4 (f), the Secretary of Defense may waive the application  
5 of any domestic source requirement or domestic content  
6 requirement referred to in subsection (b) and thereby au-  
7 thorize the procurement of items that are grown, proc-  
8 essed, reused, produced, or manufactured—

9 “(1) in a foreign country that has a Declaration  
10 of Principles with the United States;

11 “(2) in a foreign country that has a Declaration  
12 of Principles with the United States substantially  
13 from components and materials grown, reprocessed,  
14 reused, produced, or manufactured in the United  
15 States or any foreign country that has a Declaration  
16 of Principles with the United States; or

17 “(3) in the United States substantially from  
18 components and materials grown, reprocessed, re-  
19 used, produced, or manufactured in the United  
20 States or any foreign country that has a Declaration  
21 of Principles with the United States.

22 “(b) **COVERED REQUIREMENTS.**—For purposes of  
23 this section:

24 “(1) A domestic source requirement is any re-  
25 quirement under law that the Department of De-  
26 fense satisfy its requirements for an item by pro-

1       curing an item that is grown, reprocessed, reused,  
2       produced, or manufactured in the United States or  
3       by a manufacturer that is a part of the national  
4       technology and industrial base (as defined in section  
5       2500(1) of this title).

6               “(2) A domestic content requirement is any re-  
7       quirement under law that the Department of De-  
8       fense satisfy its requirements for an item by pro-  
9       curing an item produced or manufactured partly or  
10      wholly from components and materials grown, re-  
11      processed, reused, produced, or manufactured in the  
12      United States.

13      “(c) APPLICABILITY.—The authority of the Secretary  
14      to waive the application of a domestic source or content  
15      requirements under subsection (a) applies to the procure-  
16      ment of items for which the Secretary of Defense deter-  
17      mines that—

18               “(1) application of the requirement would im-  
19      pede the reciprocal procurement of defense items  
20      under a Declaration of Principles with the United  
21      States; and

22               “(2) such country does not discriminate against  
23      defense items produced in the United States to a  
24      greater degree than the United States discriminates  
25      against defense items produced in that country.

1       “(d) LIMITATION ON DELEGATION.—The authority  
2 of the Secretary to waive the application of domestic  
3 source or content requirements under subsection (a) may  
4 not be delegated to any officer or employee other than the  
5 Under Secretary of Defense for Acquisition, Technology  
6 and Logistics.

7       “(e) CONSULTATIONS.—The Secretary may grant a  
8 waiver of the application of a domestic source or content  
9 requirement under subsection (a) only after consultation  
10 with the United States Trade Representative, the Sec-  
11 retary of Commerce, and the Secretary of State.

12       “(f) LAWS NOT WAIVABLE.—The Secretary of De-  
13 fense may not exercise the authority under subsection (a)  
14 to waive any domestic source or content requirement con-  
15 tained in any of the following laws:

16               “(1) The Small Business Act (15 U.S.C. 631 et  
17 seq.).

18               “(2) The Javits-Wagner-O’Day Act (41 U.S.C.  
19 46 et seq.).

20               “(3) Sections 7309 and 7310 of this title.

21               “(4) Section 2533a of this title.

22       “(g) RELATIONSHIP TO OTHER WAIVER AUTHOR-  
23 ITY.—The authority under subsection (a) to waive a do-  
24 mestic source requirement or domestic content require-

1 ment is in addition to any other authority to waive such  
2 requirement.

3 “(h) CONSTRUCTION WITH RESPECT TO LATER EN-  
4 ACTED LAWS.—This section may not be construed as  
5 being inapplicable to a domestic source requirement or do-  
6 mestic content requirement that is set forth in a law en-  
7 acted after the enactment of this section solely on the  
8 basis of the later enactment.

9 “(i) DECLARATION OF PRINCIPLES.—(1) In this sec-  
10 tion, the term ‘Declaration of Principles’ means a written  
11 understanding (including any Statement of Principles) be-  
12 tween the Department of Defense and its counterpart in  
13 a foreign country signifying a cooperative relationship be-  
14 tween the Department and its counterpart to standardize  
15 or make interoperable defense equipment used by the  
16 armed forces and the armed forces of the foreign country  
17 across a broad spectrum of defense activities, including—

18 “(A) harmonization of military requirements  
19 and acquisition processes;

20 “(B) security of supply;

21 “(C) export procedures;

22 “(D) security of information;

23 “(E) ownership and corporate governance;

24 “(F) research and development;

25 “(G) flow of technical information; and

1           “(H) defense trade.

2           “(2) A Declaration of Principles is underpinned by  
3 a memorandum of understanding or other agreement pro-  
4 viding for the reciprocal procurement of defense items be-  
5 tween the United States and the foreign country con-  
6 cerned without unfair discrimination in accordance with  
7 section 2531 of this title.”.

8           (b) CLERICAL AMENDMENT.—The table of sections  
9 at the beginning of such subchapter is amended by insert-  
10 ing after the item relating to section 2539b the following  
11 new item:

          “2539c. Waiver of domestic source or content requirements.”.

12 **SEC. 843. CONSISTENCY WITH UNITED STATES OBLIGA-**  
13 **TIONS UNDER TRADE AGREEMENTS.**

14           No provision of this Act or any amendment made by  
15 this Act shall apply to a procurement by or for the Depart-  
16 ment of Defense to the extent that the Secretary of De-  
17 fense, in consultation with the Secretary of Commerce, the  
18 United States Trade Representative, and the Secretary of  
19 State, determines that it is inconsistent with United  
20 States obligations under a trade agreement.