



**Rubber and Plastic Footwear  
Manufacturers Association**

June 10, 2015

United States Senate  
Washington, DC 20510

Dear Senator:

The ten undersigned trade associations **ask for your support for two pro-jobs amendments offered by Sen. Kelly Ayotte (SA 1961 and SA 1962)** to the FY 2016 National Defense Authorization Act (H.R. 1735).

Senator Ayotte’s amendments would help keep America’s fiber, textile, apparel, and footwear sector vibrant by preventing further erosion of the Berry Amendment and its specialty metal variant (SA 1962) as well as the Kissell Amendment (SA 1961). These are pro-jobs domestic preference statutes for national security-related items that are vital to industry.

- SA 1961 would fix the threshold to trigger the Kissell Amendment at \$150,000.
- SA 1962 would fix the threshold to trigger the Berry Amendment and its specialty metal variant at \$150,000.

For the text of SA 1961 and SA 1962, see page 162: <https://www.congress.gov/crec/2015/06/09/CREC-2015-06-09.pdf>.

**BACKGROUND**

Under current law, the thresholds to trigger certain domestic preference statutes – the Berry Amendment (10 USC 2533a), the specialty metal variant to the Berry Amendment (10 USC 2533b), and the Kissell Amendment (6 USC 453b)<sup>1</sup> – are tied to the simplified acquisition threshold (SAT) referred to in 10 USC 2304(g). Thus, when the SAT goes up, so do the thresholds that trigger the Berry Amendment, its specialty metal variant, and the Kissell Amendment. The threshold figure is crucial because DOD and DHS are allowed to buy imported products for contracts that fall below the triggers, thereby hurting U.S. manufacturing jobs.

<sup>1</sup> The Kissell Amendment (6 USC 453b) is a Berry-type law applying to certain textile and clothing purchases made by the Department of Homeland Security.

As initially drafted, Section 854 of the House-passed version of H.R. 1735 would have raised the simplified acquisition threshold referred to in section 2304(g) of title 10 to from the current level of \$150,000 to \$500,000.

In response to industry opposition, the House adopted a modified version of Amendment #74 offered by Cong. Jim McGovern of Massachusetts that exempted covered acquisitions for the textile items listed in 10 USC 2533a(b)(1)(B) thru (E) from the threshold increase.

As passed, the House bill would have the effects of:

- Raising the threshold to trigger all other items covered by the Berry Amendment, its specialty metal variant, and the Kissell Amendment to \$500,000 and leaving those thresholds still subject to a flawed inflation-escalation mechanism that would raise the trigger at a rate higher than current levels of inflation.
- Leaving the threshold trigger for the textile items covered by the Berry Amendment at \$150,000 but still subject to a flawed inflation-escalation mechanism that would raise the trigger at a rate higher than current levels of inflation.<sup>2</sup>

The Senate substitute amendment to H.R. 1735 has no equivalent to Section 854, but does call for an advisory panel to streamline acquisition regulations in Section 808.

Because the language in Section 854 (House) and Section 808 (Senate) both would sanction further erosion of the Berry Amendment, its specialty metal variant, and the Kissell Amendment by either increasing or permitting continued increases to their respective threshold triggers, it is urgent that this weakening be stopped by fixing those triggers at \$150,000.

The pro-jobs Ayotte amendments would do just that. Passage of the Ayotte amendments also would have the effect of giving the Senate powerful negotiating leverage vis-à-vis the House to keep America's national security-related domestic preference statutes strong.

### **CONCLUSION – SUPPORT AYOTTE AMENDMENTS SA 1961 and 1962**

Continued increase of the thresholds to trigger Berry and Kissell will erode the U.S. textile, apparel, and footwear industry's ability to supply the defense industrial base, will compromise U.S. investment in textile manufacturing operations, will put at risk highly skilled and good paying textile jobs, and will weaken the domestic industry's competitive advantage in commercial markets.

Please ensure that America continues to strengthen its domestic textile, clothing, and footwear supply chain. **Support Ayotte amendments SA 1961 and SA 1962.**

Thank you for your consideration of our views.

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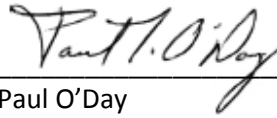
<sup>2</sup> Section 807 of the Ronald W. Reagan National Defense Authorization Act of 2005 (Pub. L. 108-375) amended the Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) by inserting a new Sec. 35A. This law specifies the periodic inflation adjustment to federal acquisition threshold triggers, including the SAT.  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_public\\_laws&docid=f:publ375.108](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ375.108)

Sincerely,



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Auggie Tantillo  
President  
National Council of Textile Organizations



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Paul O'Day  
President  
American Fiber Manufacturers Association



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Gifford Del Grande  
Chairman  
Narrow Fabrics Institute



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Bret Kelley  
Chairman  
United States Industrial Fabrics Institute



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Juanita D. Duggan  
President & CEO  
American Apparel and Footwear  
Association



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Tom Dobbins  
President  
American Composites Manufacturers Association



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Sarah Y. Freidman  
Executive Director  
SEAMS, the National Association  
for the Sewn Products Industry



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Gary Adams  
President/CEO  
National Cotton Council



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Marc Fleischaker  
Rubber & Plastic Footwear  
Manufacturers Association



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Burton Pfliger  
President  
American Sheep Industry Association

# FACT SHEET

## **HOW INCREASING THE BERRY AND KISSELL THRESHOLD TRIGGERS HURTS INDUSTRY**

Any increase to the threshold to trigger Berry and Kissell will hurt the U.S. textile, apparel, and footwear supply chain and jobs by reducing contracting opportunities for manufacturers, large and small, covered under the Berry Amendment. As an example of what fiber, textile, apparel, and footwear business that potentially could be opened to imports if the SAT was hypothetically raised to \$500,000, an analysis of DOD-funded contracts under the SAT is attached as Addendum 1 on the next page.

## **KEEPING BERRY AND KISSELL STRONG IS GOOD FOR NATIONAL SECURITY AND JOBS**

Congress enacted the Berry Amendment in 1941 (USC, Title 10, Section 2533a)<sup>3</sup> to ensure that a strong U.S. defense industrial base is always ready to meet the needs of the troops. It requires the Department of Defense (DOD) to procure certain products such as food, specialty metals, hand measuring tools, and textiles made with 100 percent U.S. content and labor. Since then, Congress has reaffirmed its support for the Berry Amendment by strengthening its provisions, recognizing that textiles and clothing are indispensable to our warfighter's safety and ability to execute their missions.

The Berry and Kissell Amendments have proven invaluable to industry. With fierce domestic competition for contracts, those laws have spurred substantial innovation in the area of military textiles, apparel, and footwear by America's manufacturers. Weight-saving carbon fibers, ballistic-resistant fabrics used in personal protective equipment, fire resistant fabrics, medical fabrics, and collapsible fuel bladders are among the thousands of products developed for the military that also have commercial applications. These innovations have helped America's textile manufacturers stay at the forefront of technical textiles, enhancing safety and boosting employment and exports.

The Berry and Kissell Amendments also stimulate investment. Substantial capital investment, including a \$500 million ballistic-resistant fiber plant built in South Carolina within the last five years, illustrates the industry's commitment to the technical fiber/fabric industrial base. Thanks to the U.S. government's longstanding policy with respect to military procurement encompassed in the Berry Amendment, that plant had a ready-made market, an important factor in calculating the risk when deciding to make that investment.

Also, it is important to note that some textiles used by the military do not have a commercial market. For national security reasons, DOD does not allow certain textile technologies to be exported. Classified dyeing and finishing techniques used to reduce heat signatures or to create a secure environment for electronic communication are just two examples of U.S. investments made to develop military-specific textile products exclusively for DOD use.

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<sup>3</sup> The Berry Amendment's location in the U.S. Code is at Title 10, Sec. 2533a (10 USC 2533a).

ADDENDUM 1

**Analysis of DOD-funded contracts under the SAP**

Below is an analysis of DOD-funded contracts for FY 2014 from USASpending.gov with respect to Federal Supply Classification 83 (textiles, tents, flags, etc.) and Federal Supply Classification (FSC) 84 (clothing and individual equipment etc.) as pertaining to the Simplified Acquisition Procedure threshold (SAT).

The current SAT threshold (Berry and Kissell trigger) is \$150,000. The table below shows the impact of the potential increase of the Berry and Kissell threshold triggers to \$500,000. Contracts less than the threshold are not subject to the Berry Amendment’s domestic sourcing requirements.

**KEY POINTS**

- Dollar amount exempted from Berry would almost double.
- Almost one dollar in five would be exempt from Berry.
- Almost 92 percent of contracts would be open to imports; hurts small businesses.
- If the threshold would have been \$500,000 in FY 2014, 6,813 contracts would have been subject to the SAP totaling \$337,086,946;

**DOD-FUNDED PRIME CONTRACT AWARDS FOR FSC 83 & 84 IN FY 2014  
(Rounded to nearest million or percentage)**

Category	\$ in Millions	% of Dollars	Contracts Awarded (Actual)	% Contracts
All	1,804	100	7,438	100
More than \$500k	1,467	81	625	8
\$150k to \$500k	157	9	549	7
Less than \$150K	180	10	6,264	84