



November 2017

GOVERNMENT PROCUREMENT

Effect of Restriction on DHS's Purchasing of Foreign Textiles Is Limited

Accessible Version

GAO Highlights

Highlights of [GAO-18-116](#), a report to congressional committees

Why GAO Did This Study

The U.S. textile industry sustained significant losses when textile production fell from \$71 billion in 2006 to \$46 billion in 2009, according to the U.S. Bureau of Economic Analysis. As a part of the American Recovery and Reinvestment Act of 2009, Congress passed the Kissell Amendment, which placed a restriction on DHS's procurement of certain textiles from foreign sources. DHS has applied this restriction to uniforms and body armor. The amendment was intended to increase opportunities for American textile and apparel manufacturers, according to the Senate Committee on Appropriations.

The Senate report that accompanied Senate Bill 1619, a bill related to the Consolidated Appropriations Act, 2016, includes a provision for GAO to review DHS's implementation of the Kissell Amendment and its effectiveness. This report addresses the extent to which (1) DHS has incorporated the Kissell Amendment into its procurement policies and procedures and (2) the Kissell Amendment affects DHS's procurement of textiles. To perform this work, GAO analyzed DHS policies and procedures, procurement obligations data, textile contract files, and vendor ordering data from DHS's current uniforms contract. GAO also interviewed DHS and U.S. Trade Representative officials and private sector representatives, including the vendor for the current DHS uniforms contract. GAO received technical comments from DHS, which GAO incorporated as appropriate.

View [GAO-18-116](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

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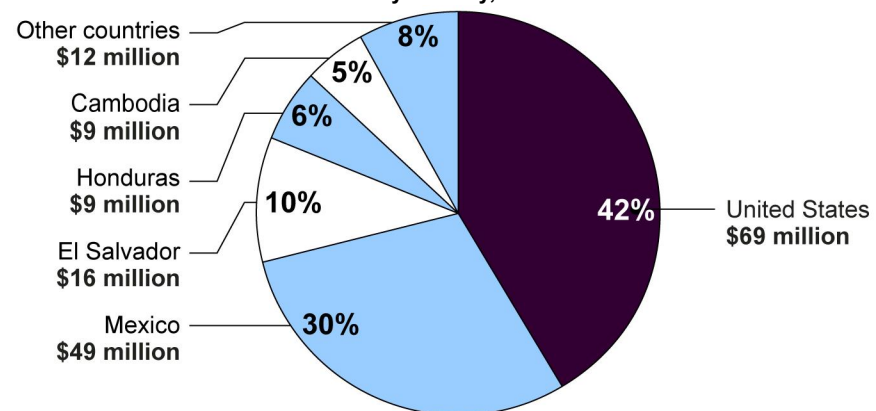
Effect of Restriction on DHS's Purchasing of Foreign Textiles Is Limited

What GAO Found

The U.S. Department of Homeland Security (DHS) has updated its policies and procedures to incorporate a restriction on its procurement of certain textiles as specified in the "Kissell Amendment." In August 2009, DHS amended its procurement policies to reflect the Kissell Amendment restriction and describe the limitations on DHS's procurement of specified textiles from sources outside the United States. All 11 contracts GAO reviewed for uniforms and body armor entered into by a DHS component since August 2009 included language regarding the Kissell Amendment restriction. In addition, according to officials, DHS has several procedures to ensure that contracting officers adhere to the requirements of the Kissell Amendment. These include a required acquisition review process; a requirement for all DHS components to use department-wide contracts; verification procedures; and training for contracting personnel on the Kissell Amendment restriction.

In practice, the Kissell Amendment restriction affects a limited number of procurements due to multiple factors and has not fully restricted DHS from purchasing textiles from foreign sources. The restriction applies only to certain textile purchases directly related to U.S. national security interests above the simplified acquisition threshold of \$150,000, and must be applied consistent with U.S. obligations under international agreements. For most of DHS, this restriction limits only procurements that fall between \$150,000 and \$191,000, the World Trade Organization Government Procurement Agreement threshold. However, because procurements by the Transportation Security Administration (TSA) of textiles are excluded from most international agreements, the Kissell Amendment prevents TSA's purchasing of certain textiles above \$150,000 from all but three foreign countries. In September 2014, DHS signed a uniforms contract, the largest procurement covered by the Kissell Amendment. Under this contract, DHS has ordered 58 percent of the \$164.6 million in uniform items from foreign sources through June 2017 (see figure).

DHS Procurement of Uniform Items by Country, October 2014 to June 2017



Total value of ordered uniform items = \$164.6 million.

Percentages may not add to 100 due to rounding.

Source: GAO analysis of Department of Homeland Security data provided by the vendor. | GAO-18-116

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Abbreviations

BAA	Buy American Act
CAFTA-DR	Dominican Republic-Central America-United States Free Trade Agreement
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOD	Department of Defense
FPDS-NG	Federal Procurement Data System – Next Generation
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FLETC	Federal Law Enforcement Training Center
FSS	Federal Supply Schedules
FTA	free trade agreement
GPA	Government Procurement Agreement
HSAR	Homeland Security Acquisition Regulation
ICE	U.S. Immigration and Customs Enforcement
NAFTA	North American Free Trade Agreement
NPPD	National Protection and Programs Directorate
TAA	Trade Agreements Act of 1979
TSA	Transportation Security Administration
USTR	U.S. Trade Representative
WTO	World Trade Organization

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November 21, 2017

The Honorable John Boozman
Chairman
The Honorable Jon Tester
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate

The Honorable John R. Carter
Chairman
The Honorable Lucille Roybal-Allard
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
House of Representatives

Historically, the U.S. textile and apparel industries have faced intense foreign competition in the U.S. marketplace from countries with low labor costs. According to the U.S. Bureau of Labor Statistics, the apparel, textile, and leather manufacturing industries lost 228,000 jobs from 2005 to 2016, representing a 26 percent decrease in employment in those fields. In particular, the U.S. textile industry sustained significant losses during the recession of 2007 to 2009. According to the U.S. Department of Commerce's Bureau of Economic Analysis, textile production fell from \$71 billion in 2006, the year prior to the start of the U.S. recession, to \$46 billion in 2009, a 35 percent decrease.

The American Recovery and Reinvestment Act of 2009¹ was enacted, in part, to preserve and create jobs and promote economic recovery. As part of this act, Congress passed the "Kissell Amendment,"² which, according to the Senate Committee on Appropriations, was intended to increase opportunities for American textile and apparel manufacturers. The Kissell Amendment generally restricts the Department of Homeland Security (DHS) from using its funds to procure certain fibers, textiles, and clothing

¹Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

²Pub. L. No. 111-5, § 604 (codified at 6 U.S.C. § 453b).

that are not grown, reprocessed, reused, or produced in the United States.

Various administrations and congressional bills have supported similar efforts to increase opportunities for American manufacturers and producers. The current administration has also placed an emphasis on the procurement of domestically produced goods, products, and materials by the federal government in an effort to stimulate growth and create jobs in the United States. In April 2017, the President of the United States issued the Presidential Executive Order on Buy American and Hire American stating, in part, that it shall be a policy of the executive branch to maximize the use of domestic goods.³

A Senate Report accompanying Senate Bill 1619, a bill related to the Consolidated Appropriations Act, 2016, includes a provision for us to review DHS implementation of and compliance with the Kissell Amendment, as well as the policy's effectiveness.⁴ This report examines the extent to which (1) DHS has incorporated the Kissell Amendment into its procurement policies and procedures and (2) the Kissell Amendment affects DHS's procurement of textiles.

To address these objectives, we reviewed U.S. laws, regulations, and international trade agreements, and interviewed officials from DHS and the Office of the U.S. Trade Representative (USTR) to understand the legal context for the Kissell Amendment. To determine the extent to which DHS incorporated the Kissell Amendment into its procurement policies and procedures, we reviewed relevant DHS documents and procurement files and interviewed DHS officials. We also reviewed 11 uniforms and body armor contracts that DHS components entered into after August 2009.

To determine the extent to which the Kissell Amendment affects DHS's procurement of textiles from U.S. and foreign sources, we reviewed obligations data from the Federal Procurement Data System – Next Generation (FPDS-NG), and analyzed uniform cost estimate data from DHS and uniform ordering data from the vendor for the current DHS

³Buy American and Hire American, Exec. Order No. 13,788, 82 Fed. Reg. 18,837 (Apr. 18, 2017).

⁴S. Rep. No. 114-68, at 16-17 (2015) (accompanying S. 1619, 114th Cong. (2015), which is related to Pub. L. No. 114-113, 129 Stat. 2242 (2015)).

uniforms contract. We tested the reliability of both FPDS-NG data and DHS ordering data from the vendor and determined the data to be sufficiently reliable for the purposes of this report. See appendix I for more information on our scope and methodology.

We conducted this performance audit from January 2017 to November 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Kissell Amendment

The Kissell Amendment applies to contracts entered into by DHS as of August 16, 2009, and, according to the Congressional Record, would require DHS to purchase uniforms made in the United States.⁵ According to the Congressional Record, the amendment was intended to extend some of the provisions found in the Berry Amendment to DHS. The Berry Amendment generally restricts the Department of Defense's (DOD) procurement of textiles, among other items, to those produced within the United States.⁶ Pursuant to the Kissell Amendment, subject to exceptions, funds appropriated, or otherwise available to DHS, may not be used to procure certain textile items directly related to the national security interests of the United States if the item is not grown, reprocessed, reused, or produced in the United States.⁷ The Kissell Amendment

⁵155 Cong. Rec. H723-H724 (daily ed. Jan. 28, 2009) (statements of Congressman Kissell and Congressman Price).

⁶Congress enacted the Berry Amendment in 1941 to maintain a healthy industrial base and encourage domestic production of items deemed essential to meet defense needs. It generally requires the DOD to purchase certain domestically grown, reprocessed, reused, or produced items, including food, clothing, and synthetic fabrics.

⁷6 U.S.C. § 453b. The Homeland Security Acquisition Regulation (HSAR) subpart that implements the Kissell Amendment defines items directly related to national security interests as items intended for use in a DHS action protecting the nation from internal or external threats, including protecting the nation's borders, transportation system, maritime domain, or critical infrastructure, as determined by the contracting officer. 48 C.F.R. § 3025.7001(e).

specifies categories and types of textiles including items such as clothing, tents, tarpaulins, covers, and protective equipment, as well as the fibers used for fabrics such as cotton and other natural and synthetic fabrics.⁸ We refer to these textile items that are directly related to the national security interests of the United States as “Kissell-covered items.”

The Kissell Amendment also has multiple exceptions to the procurement restriction, including:

- *Small Purchases Exception* – procurements under the simplified acquisition threshold (currently set at \$150,000).
- *Availability Exception* – satisfactory quality and sufficient quantity of any Kissell-covered item cannot be procured when needed at U.S. market prices.
- *Procurements Outside the United States* – procurements by vessels in foreign waters or emergency procurements outside the United States.
- *De Minimis Exception* – DHS may accept delivery of a Kissell-covered item if it contains non-compliant (i.e., foreign) fibers as long as the total value of those fibers does not exceed 10 percent of the total purchase price of the item.

In addition to the exceptions noted above, the Kissell Amendment also states that the Amendment shall be applied in a manner consistent with U.S. obligations under international agreements.⁹ As a result, purchases of Kissell-covered items, including uniforms and body armor, by DHS and its components must be procured consistent with U.S. obligations under relevant U.S. trade agreements. These agreements include the World Trade Organization (WTO) Government Procurement Agreement (GPA)¹⁰ and 14 bilateral or regional free trade agreements (FTAs) with 20

⁸6 U.S.C. § 453b(b). For example, DHS has determined that uniforms and body armor are covered by the Kissell Amendment.

⁹6 U.S.C. § 453b(k).

¹⁰Two versions of the GPA currently coexist: the prior GPA, which was signed on April 15, 1994, and a revision of the agreement, which entered into force on April 6, 2014. Two versions of the GPA currently coexist because Switzerland, a party to the 1994 GPA, is still in the process of adopting the 2014 revised GPA. In this report we use WTO GPA to refer to the 2014 GPA.

countries.¹¹ These agreements generally require each party's goods and services to be given treatment comparable to what is given to domestic goods and services in certain government procurements. The United States implements these obligations through the Trade Agreements Act of 1979 (TAA) and subpart 25.4 of the Federal Acquisition Regulation (FAR).¹² According to DHS and its components, officials apply the Kissell Amendment by following the TAA as implemented in FAR subpart 25.4. As a result, when an international trade agreement applies to a DHS procurement of a Kissell-covered item, the Kissell Amendment does not restrict DHS's purchasing of textile items from that foreign source, regardless of the item's relationship to the national security interests of the United States.

The Buy American Act

The Buy American Act (BAA) can also apply to DHS procurements.¹³ The BAA restricts the U.S. government from purchasing nondomestic end products, unless an exception applies. Examples of exceptions include:

¹¹The United States has entered into FTAs with Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) covers six of these countries (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua). As we previously reported in February 2017, Department of Commerce officials noted that the U.S.–Jordan commitment regarding government procurement does not include any specific procedural or market access commitments. See GAO, *Government Procurement: United States Reported Opening More Opportunities to Foreign Firms Than Other Countries, but Better Data Are Needed* (Washington, D.C.: Feb. 9, 2017).

¹²19 U.S.C. §§ 2501-2582 and FAR 25.4. Specifically, under FAR section 25.402(a)(1), offers of eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country, receive equal consideration with domestic offers. Moreover, under FAR section 25.403, in acquisitions covered by the WTO GPA, agencies shall acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. Under this part of the FAR, a designated country is defined as a WTO GPA country, a Free Trade Agreement country, a least developed country, or a Caribbean Basin country. See FAR 25.003 for the list of designated countries. Additionally, the FAR states that this restriction does not apply to purchases of supplies by DOD from a country with which it has entered into a reciprocal agreement, as provided in departmental regulations.

¹³The Buy American Act was enacted in 1933 during the Great Depression to create and preserve jobs for American workers. 41 U.S.C. §§ 8301 – 8305.

- Where the cost of the domestic end product would be unreasonable.
- Where sufficient commercial quantities of domestic end products of a satisfactory quality are not reasonably available.¹⁴

In acquisitions covered by the WTO GPA or FTAs, USTR has waived the Buy American statute and other discriminatory provisions for eligible products. The BAA could apply to procurements of certain textile items valued below the \$150,000 simplified acquisition threshold, to which the Kissell Amendment does not apply.¹⁵ The applicability of the act to a particular procurement depends on a number of factors such as the existence of a waiver or whether an exception applies.

DHS Obligations for Textile Procurements

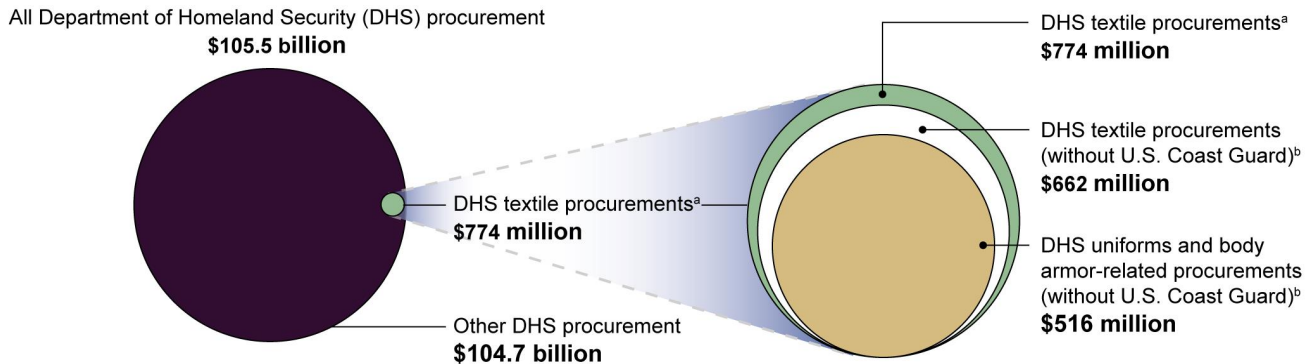
DHS and its components procure textiles and fabrics for numerous purposes, including clothing and equipping its officers and employees. From October 2009 through June 2017, of DHS's more than \$105 billion in obligations for procurements, \$774 million, or less than one percent, was for textile products, according to FPDS-NG.¹⁶ The majority of textiles and fabrics procured by DHS components are for uniforms and body armor. In particular, of the \$774 million, DHS obligated \$516 million (or 67 percent) to procure uniforms and body armor for DHS personnel (see fig. 1).

¹⁴See FAR subparts 25.1 and 25.2 for BAA exceptions for supply contracts and construction material contracts.

¹⁵Currently, there are FTAs that have thresholds below the simplified acquisition threshold of \$150,000.

¹⁶These textile items are included in groups 83 and 84 of the Federal Procurement Data System Product and Service Codes Manual, August 2015 Edition. For the purposes of this report, textile items represent product service codes groups 83 and 84.

Figure 1: Department of Homeland Security (DHS) Obligations for Procurements, October 2009 through June 2017



Source: GAO analysis of Federal Procurement Data System – Next Generation (FPDS-NG) data. | GAO-18-116

^aDHS textile procurements are the total of product service codes groups 83 and 84 in FPDS-NG.

^bDHS uniforms and body armor-related procurements are the total of product service codes 8405, 8410, 8415, and 8470 in FPDS-NG. We did not include the U.S. Coast Guard in this segment because they procure 79 percent of their textile items from domestic sources through the Department of Defense, according to Coast Guard officials.

DHS Updated Policies and Procedures to Incorporate the Kissell Amendment Restriction

DHS Procurement Policies Contain the Kissell Amendment Restriction

In August 2009, DHS updated its procurement regulations, the HSAR, to incorporate the Kissell Amendment restriction on the procurement of textiles from foreign sources; since then DHS inserted language incorporating the restriction into the 11 uniform and body armor contracts we reviewed. The HSAR establishes standardized DHS policies for all procurement activities within the department; according to DHS officials, all DHS components are to follow these policies.¹⁷ Pursuant to the Kissell Amendment, the restriction on the procurement of textiles became effective for DHS on August 16, 2009. One day later, DHS published an

¹⁷The HSAR states that the regulation is issued for departmental guidance according to the policy cited in the Federal Acquisition Regulation 48 Code of Federal Regulations 1.301. The regulation is issued by the Chief Procurement Officer who is the DHS Senior Procurement Executive.

interim rule with a request for comments from the public that amended relevant HSAR sections¹⁸ to reflect the statutory change limiting the procurement of products containing textiles from sources outside the United States (i.e., the Kissell Amendment).¹⁹ On June 9, 2010, after receiving comments from the public, DHS adopted the amendments issued under the interim rule as final and without change.²⁰ The amended sections detail the restriction on procurements of foreign textiles. They also provide a list of the types of textile items included in the restriction (i.e., yarn, wool, cotton), the exceptions noted in the Kissell Amendment, and provide detail on the specific application of trade agreements. Under the regulations, unless an exception applies, a specific clause shall be inserted in solicitations and contract actions detailing the requirement to use domestic goods for any procurement of a Kissell-covered item.²¹

Some components within DHS issued additional, supplemental guidance to the HSAR, while other components determined that additional guidance would be duplicative, according to officials. For example, Transportation Security Administration's (TSA) Internal Guidance and Procedure Memorandum, updated in June 2016, provides additional guidance to contracting officers at TSA on the procurement of textiles. This guidance specifically states that for certain textile products, TSA's contracting officers can only evaluate and/or accept offers from specified countries. Other components determined that additional guidance was not needed because the HSAR adequately covers the requirements of the Kissell Amendment for their purposes. For example, U.S. Secret Service officials stated that, for any procurement of textiles, they insert the required language from the HSAR into the request for proposals in case an item could be considered directly related to U.S. national security interests and thereby subject to the Kissell Amendment restriction.

DHS officials stated that contracts for the procurement of uniforms and body armor are their only contracts for textile-related products that are directly related to national security interests. See figure 2 for examples of DHS uniforms and body armor.

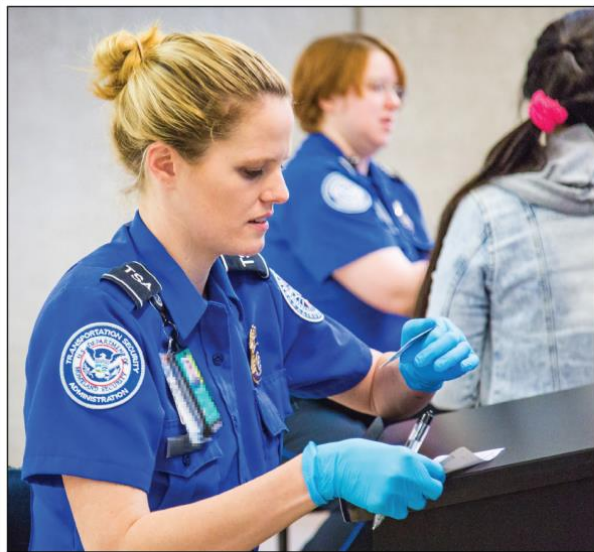
¹⁸48 C.F.R. parts 3025 and 3052.

¹⁹74 Fed. Reg. 41,346 (Aug. 17, 2009).

²⁰75 Fed. Reg. 32,676 (June 9, 2010).

²¹See 48 C.F.R. § 3025.7003.

Figure 2: Examples of Department of Homeland Security Uniforms and Body Armor



Transportation Security Administration (TSA) officials in uniform inspecting documentation.



U.S. Immigration and Customs Enforcement personnel in uniform participating in a training exercise.

Source: TSA and the Department of Homeland Security website. | GAO-18-116

According to DHS officials, other textile or apparel procurements, such as curtains for DHS offices, would likely not be subject to the foreign procurement restriction under the Kissell Amendment because they are not directly related to national security interests. DHS components can also procure textiles through the Federal Supply Schedules (FSS) program.²² When ordering from these contracts, DHS contracting officers would make the determination of whether or not the purchase is directly related to national security interests and therefore subject to the Kissell Amendment restriction, according to DHS officials. DHS officials also explained that if the purchase under the FSS program contract is subject to the Kissell Amendment, the contracting officer would be responsible for inserting the required language from the HSAR into the delivery order.

²²The FSS program is managed by the General Services Administration, and provides federal agencies a simplified process for purchasing commercial products and services at prices associated with volume buying. A schedule consists of contracts awarded to more than one supplier that provide similar products and services, at varying prices.

All 11 of the contracts we reviewed for uniforms and body armor²³ entered into by a DHS component since August 2009 included language regarding the restriction of the Kissell Amendment.²⁴ Many of DHS's components that buy uniforms, including TSA and U.S. Customs and Border Protection (CBP), were already under contract with a vendor to supply uniforms when the Kissell Amendment took effect in August 2009. The Kissell Amendment specified that it applied to contracts entered into by DHS 180 days after the enactment of the American Recovery and Reinvestment Act of 2009.²⁵ Therefore, DHS and its components did not apply the Kissell restriction to contracts signed before August 16, 2009. Several components separately signed contracts with uniform vendors after prior contracts expired and the Kissell restriction was in effect. For example, in February 2010, TSA signed a contract for uniforms with a vendor that included language restricting the foreign procurement of those uniforms per the Kissell Amendment.

In 2012, DHS decided to enter into a single, department-wide contract for the procurement of uniforms for all of its components.²⁶ While that contract was being developed, several components signed additional contracts for uniforms with vendors to ensure a continuous supply of uniform items for their officers. This included a "bridge" contract between TSA and a vendor in February 2013, which also included language referencing the Kissell Amendment and language restricting the foreign procurement of those uniforms. In September 2014, DHS entered into its current 5-year, department-wide uniforms contract that provides eight

²³DHS currently uses a department-wide contract vehicle for the procurement of its uniforms and another department-wide contract vehicle for the procurement of body armor. They refer to these department-wide contract vehicles as "strategic sourcing contract vehicles." DHS also previously used a department-wide contract for body armor. For our review, we looked at the current and prior body armor contract vehicles, each of which constituted three indefinite-delivery, indefinite-quantity contracts for a total of six contracts.

²⁴These contracts included five uniforms contracts and six body armor contracts.

²⁵6 U.S.C. § 453b(l).

²⁶Seven of DHS's 15 operational and support components order uniform items from this contract, including CBP, Federal Emergency Management Agency (FEMA), Federal Law Enforcement Training Center (FLETC), National Protection and Programs Directorate (NPPD), TSA, U.S. Immigration and Customs Enforcement (ICE), and U.S. Secret Service. In addition, U.S. Coast Guard was later added to the contract through a modification in October 2016. However, some of DHS's operational and support components, such as U.S. Citizenship and Immigration Services and the Domestic Nuclear Protection Office, do not procure uniforms from this contract.

DHS components with uniform clothing items.²⁷ One vendor holds this uniforms contract.²⁸

DHS Has Procedures to Ensure That the Kissell Amendment Restriction Is Properly Applied

DHS employs multiple procedures, according to officials, in an effort to ensure that the restriction on the procurement of foreign textiles from the Kissell Amendment was and is properly applied, including (1) a standardized procurement contract review process; (2) a requirement for all DHS components to use established department-wide contracts; (3) verification procedures to ensure the stated country of origin is correct; and (4) trainings on foreign procurement restrictions.

First, the DHS official review process for all procurements helps ensure that the Kissell restriction is applied, if appropriate, to contracts for textiles and apparel, according to officials. Specifically, each procurement goes through a standardized review process that includes several levels of acquisition supervisors and DHS legal counsel, depending on the estimated dollar amount of the procurement. The DHS Acquisition Manual requires this review and approval process,²⁹ which is designed to ensure compliance with all relevant federal acquisition laws, regulations, policies, and procedures. Through this process, officials evaluate the proposed contract for a number of restrictions, such as the appropriate use of a small business set-aside or a sole-source contract, which must also be reviewed by supervisors and legal departments before contract approval. According to DHS officials, while the applicability of the Kissell Amendment is part of the standard review process, there is no separate review for whether the foreign procurement restriction should be applied to the procurement. Officials also stated that the small number of

²⁷The Food and Drug Administration, which is not part of DHS, is also part of the contracting vehicle and procures uniforms through that contract for its personnel. The U.S. Coast Guard was added to the contract by a modification in October 2016 and can also procure uniform items under the contract. According to Coast Guard officials, U.S. Coast Guard procures the majority (79 percent) of its uniform items from the DOD's Defense Logistics Agency; all other uniform and textile purchases comprise U.S.-made end products.

²⁸The uniforms contract is a competitively awarded, single-award indefinite-delivery indefinite-quantity contract with a not-to-exceed value of \$450 million.

²⁹DHS Acquisition Manual subpart 3004.70.

contracting officers handling these textile procurements are aware of the requirements.

Second, DHS now uses department-wide contracts for uniforms and body armor rather than each component entering into its own contracts for those items. Establishing and using these department-wide contracts increases efficiencies and reduces duplication in the department's procurement processes, according to DHS documentation. According to agency officials, the establishment of a department-wide uniforms contract for use by all DHS components reduces opportunities for mistakes, including the possibility of a contracting officer issuing a contract that does not include the required restriction for a Kissell-covered item.

Third, the department relies on the vendor to verify that the item is in compliance with all applicable restrictions. It is not the responsibility of the agency or department to verify the country of origin of an item procured through a contract. According to the FAR, the contracting officer may rely on the vendor's certification of the country of origin for an end product when evaluating a foreign offer.³⁰ DHS officials told us that, for each contract, the vendor is responsible for certifying the country of origin and notifying DHS if a uniform item from a previously approved country is no longer available and a replacement must be located. According to representatives from the current uniforms vendor, both its manufacturing facilities and its subcontractors have measures and internal controls in place to ensure that all items under the current uniforms contract are sourced from designated countries. Furthermore, if an item is being misrepresented, or not from the reported country of origin, other vendors in the industry could report such suspected violations to DHS and the department would investigate possible false claims.³¹ According to DHS officials, no reports have been made against the vendor for the current uniforms contract.

³⁰FAR 25.501.

³¹The False Claims Act establishes, among other things, liability for people or entities that knowingly submit false claims for payment to the government or knowingly make a false record or statement material to a false claim. The act authorizes the government to collect civil penalties for each false claim and to triple the amount of the government's damages. According to DHS officials, the False Claims Act remedy is the main enforcement tool used in all government procurement compliance issues.

In addition, CBP's Textiles and Trade Agreements Division is responsible for the Textile Production Verification Team Program. Under this program, CBP deploys teams of personnel drawn from many DHS components to FTA partner countries to visit manufacturers of textiles imported into the United States. These teams review textile production and verify compliance with the terms of the FTA. CBP provided information that showed it had made numerous verification visits to factories used by DHS's uniform vendor since October 2011. However, CBP officials said they did not know the degree to which the vendor's imports from these factories were used to fulfill the DHS uniform contract.

Fourth, DHS provided training in 2009 and in 2017 to contracting personnel who conduct textile and apparel procurements subject to the Kissell Amendment and other Buy American-like provisions to ensure that the requirements are applied appropriately. The Kissell Amendment required that the Secretary of DHS ensure that each member of DHS's acquisition workforce "who participates personally and substantially in the acquisition of textiles on a regular basis receives training during fiscal year 2009 on the requirements" of the Kissell Amendment and the regulations implementing the amendment.³² The amendment further states that any training program developed after August 2009 include comprehensive information on the Kissell Amendment restriction. According to officials, appropriate DHS contracting personnel were trained on the requirements of the Kissell Amendment through a presentation to DHS's Acquisition Policy Board in July 2009. DHS officials, however, were unable to identify the number of personnel present during this meeting or the materials associated with this training.

According to DHS officials, no further training on Kissell requirements was conducted until June and July 2017, when DHS officials conducted two webinars that included approximately 570 DHS acquisition professionals on the requirements of the Kissell Amendment and its implications under the President's Buy American and Hire American Executive Order from April 2017. Our review on the implementation of the Kissell Amendment, as well as the President's new actions to increase opportunities for government agencies to buy American and hire American, precipitated the trainings, stated DHS officials. We observed the July 2017 training, at the invitation of DHS, and confirmed that the materials and topics covered included Kissell Amendment requirements.

³²6 U.S.C. § 453b(j).

The Kissell Amendment Restriction Has a Limited Effect on DHS Textile Procurements

In practice, the Kissell Amendment affects DHS textile purchases in a limited manner due to multiple factors. For most DHS components, these factors limit the effect of the Kissell Amendment restriction to certain foreign textile procurements directly related to U.S. national security interests that fall between \$150,000 and \$191,000. Specifically, from October 2009 to June 2017, only 14 DHS-awarded textile contracts, excluding TSA, fell within this range, according to FPDS-NG data. TSA textile procurements, unlike most DHS components,³³ are excluded from the coverage of most U.S. international agreements.³⁴ Therefore, the Kissell Amendment restricts TSA's procurement of certain foreign textiles above \$150,000 from all but three foreign countries. According to DHS officials, the current contracts to which the Kissell Amendment applies are department-wide contracts for uniforms and body armor. As of June 2017, under the current uniforms contract, 58 percent of the value of ordered uniform items by DHS came from foreign sources. In addition, DHS officials stated that the current body armor contracts source all textile items from the United States.

The Kissell Amendment Restriction Affects a Limited Number of DHS Textile Procurements Due to Multiple Factors

The number of DHS's textile procurements that could be affected by the Kissell Amendment restriction is limited by multiple factors. The Kissell Amendment restriction applies only to those textile items that are directly related to national security interests for procurements above the \$150,000

³³According to U.S. Coast Guard officials, FAR requirements apply to the U.S. Coast Guard regarding the procurement of textiles (product service codes 83 and 84) in the same manner as they apply to other DHS components (except TSA). In other words, the U.S. Coast Guard's procurement of textiles are covered under applicable U.S. international trade agreements and the Kissell Amendment restriction does not limit procurement to domestic products when the relevant procurement threshold has been met.

³⁴In this report we did not include the U.S. Coast Guard as part of our analysis because they primarily order U.S.-made uniform items through the DOD, according to Coast Guard officials.

simplified acquisition threshold,³⁵ and must be applied in a manner consistent with U.S. obligations under international agreements.³⁶ In practice, this limits the number of procurements that could be affected by the amendment's restriction to those of Kissell-covered items between the current simplified acquisition threshold and the current WTO GPA threshold of \$191,000, a \$41,000 range, for most DHS components.³⁷ Furthermore, statutory and regulatory provisions generally require that government agencies acquire U.S.-made or designated country end products and services for procurements covered by the WTO GPA.³⁸ For most of DHS, the procurement of certain textiles is covered by the WTO GPA. Therefore, due to these regulations, most DHS components are limited in their textile procurements at or above \$191,000 to the United States or designated countries, regardless of the Kissell Amendment. However, the number of TSA contracts that could be affected by the Kissell Amendment restriction is potentially greater since procurement of textiles by TSA is not subject to statutory and regulatory provisions that affect the rest of DHS's procurement of textiles.

U.S. obligations under international agreements, as implemented by the TAA and FAR, require that offers of eligible products receive equal consideration with domestic offers.³⁹ The FAR additionally specifies that agencies, "in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products unless offers for such end products are either not received or are insufficient to fulfill the requirements."⁴⁰ To be a U.S. procurement covered by the WTO GPA, the

³⁵See 6 U.S.C. § 453b(f), 41 U.S.C. § 134, and FAR 2.101. The simplified acquisition threshold varies depending on the purpose of the procurement. Procurements not exceeding the simplified acquisition threshold are to follow simplified contracting procedures to the maximum extent possible. The purpose of simplified contracting procedures is to reduce administrative costs, promote efficiency, and avoid unnecessary burdens for agencies and contractors. For example, when using simplified contracting procedures, a number of laws and contract clauses are inapplicable. The simplified acquisition threshold changed from \$100,000 to \$150,000 on October 1, 2010.

³⁶6 U.S.C. § 453b(k).

³⁷The value of DHS's procurements also has a role in the application of the Kissell Amendment.

³⁸19 U.S.C. § 2512 and FAR 25.403(c)(1).

³⁹FAR 25.402(a)(1).

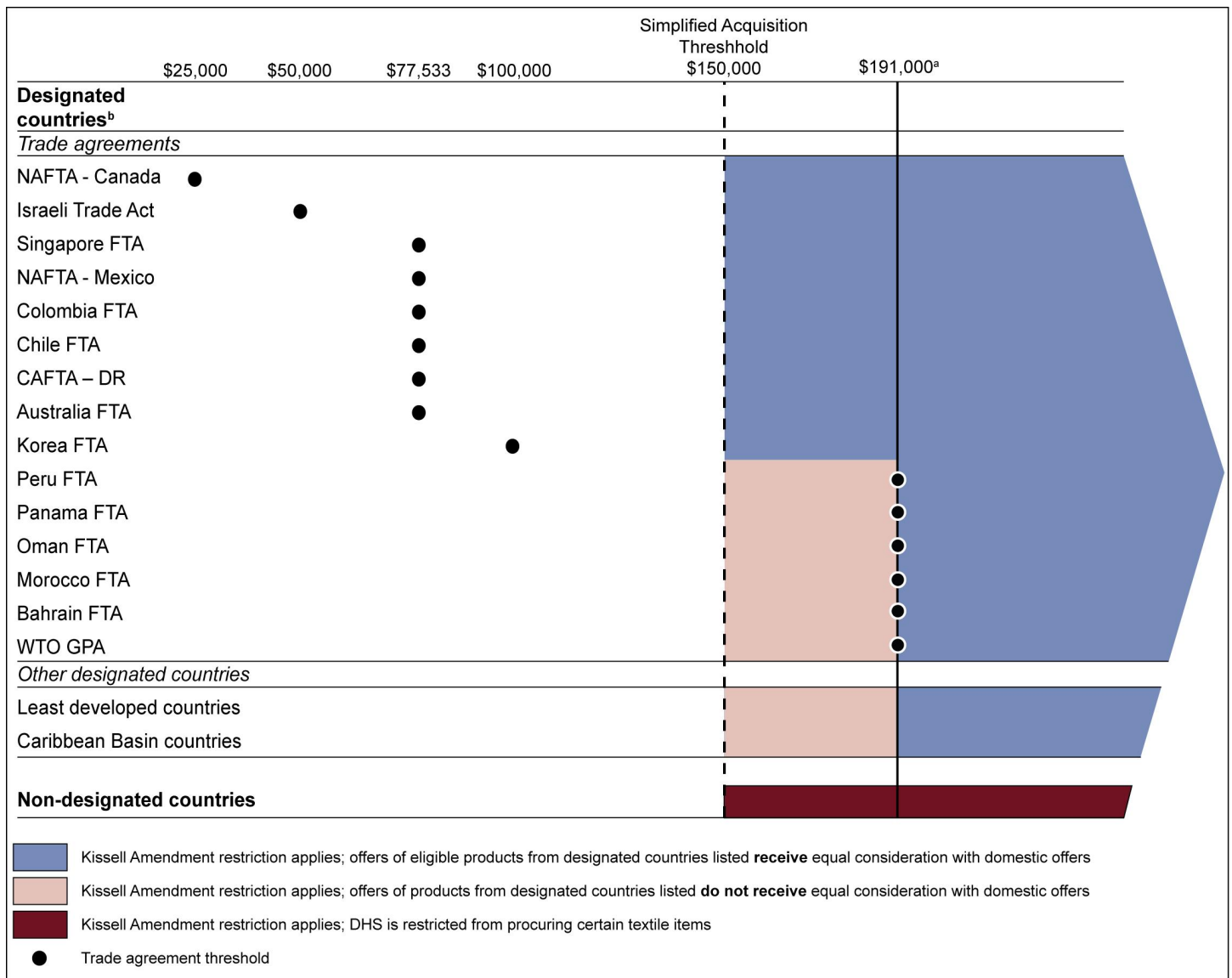
⁴⁰FAR 25.403(c). This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA. See FAR 25.003 for a full listing of designated countries.

procurement must (1) be performed by a covered government entity; (2) be for a covered item; and (3) be at or above the WTO GPA threshold, which is currently \$191,000.⁴¹ Other international trade agreements have their own thresholds currently ranging from \$25,000 to \$191,000.⁴² Figure 3 outlines the various key procurement thresholds that may affect the designated and non-designated countries from which DHS could source textiles with respect to the Kissell Amendment. Most of these dollar thresholds are subject to revision approximately every 2 years.

⁴¹Under the WTO GPA, each party's covered government procurement is defined in part through coverage schedules in annexes to the agreement. These annexes identify the procuring entities covered by the agreements and also identify the goods and services and construction services whose procurement by the specified entities is covered by the agreement.

⁴²See FAR 25.402 for current thresholds. The applicability of the Kissell Amendment in procurements valued above the simplified acquisition threshold and below the WTO GPA threshold would depend, in part, on whether an offer included eligible products from a Free Trade Agreement country.

Figure 3: Key Procurement Thresholds Affect Application of the Kissell Amendment Restriction on DHS Textile Procurements



Legend: WTO GPA = World Trade Organization Government Procurement Agreement; FTA = Free Trade Agreement; CAFTA-DR = Dominican Republic-Central America Free Trade Agreement; NAFTA = North American Free Trade Agreement; DHS=Department of Homeland Security.

Source: GAO analysis of section 25.4 of the Federal Acquisition Regulation (FAR) and the "Kissell Amendment," Pub. L. No. 111-5, § 604 (codified at 6 U.S.C. § 453b). | GAO-18-116

Notes: This figure does not apply to Transportation Security Administration (TSA) textile procurements.

Applicability of an international trade agreement or the Kissell Amendment is subject to factors such as the procuring entity, the good being procured, and whether any exceptions apply. This figure does not address these other factors and does not illustrate coverage.

The threshold amounts presented are based on 2017 data for supply contracts. Most threshold amounts are subject to revision approximately every 2 years.

^aFAR 25.403 limits the procurement of goods to the United States and designated countries beyond this point.

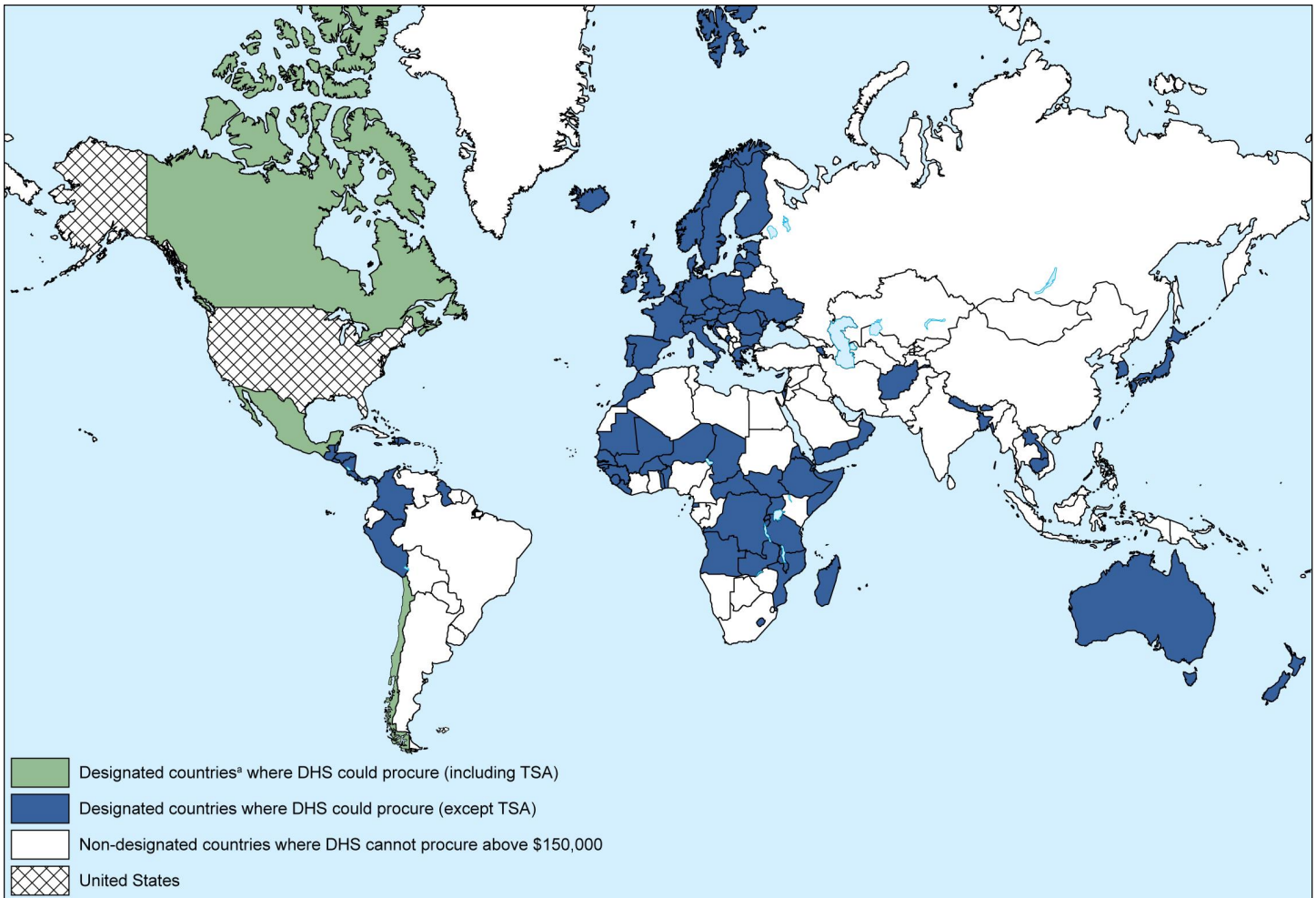
^bA "designated country" is defined in the FAR as a WTO GPA country, an FTA country, a least developed country, or a Caribbean Basin country. See FAR 25.003 for the full list of designated countries.

Due to the multiple factors that affect DHS's textile procurements, most of DHS's components may source eligible textiles from up to 128 designated countries outside the United States in procurements at or above \$191,000 (see fig. 4). This is because most DHS components' textile procurements are considered covered items under the WTO GPA. Therefore, most DHS components' foreign textile procurements that either meet or exceed the current \$191,000 threshold are restricted to designated countries regardless of the Kissell Amendment, due to the FAR.⁴³ These designated countries include WTO GPA countries, Free Trade Agreement countries, least developed countries, and Caribbean Basin countries.⁴⁴

⁴³FAR 25.403.

⁴⁴See FAR 25.003 for the list of designated countries.

Figure 4: Foreign Sources from Which the DHS Could Procure Textile Items



Legend: DHS=Department of Homeland Security; TSA=Transportation Security Administration.

Sources: GAO analysis of section 25.4 of the Federal Acquisition Regulation (FAR) and the "Kissell Amendment," Pub. L. No. 111-5, § 604 (codified at 6 U.S.C. § 453b).
Map Resources (map) | GAO-18-116

Notes: Although Hong Kong is a special administrative region of China and the United States does not have diplomatic relations with Taiwan, we have included them as countries because section 25.402 of the FAR lists each as a designated country.

This figure is a general illustration of the foreign sources from which DHS could potentially procure textiles under the Kissell Amendment and FAR 25.403 and does not take into account the application of certain exceptions.

^aA "designated country" is defined in the FAR as a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, a least developed country, or a Caribbean Basin country. See FAR 25.003 for the full list of designated countries.

As noted above, multiple factors influence DHS's procurement of textiles and the number of contracts that could be affected by the Kissell Amendment restriction. Based on our analysis of contract data from

FPDS-NG, from October 2009 to June 2017, DHS awarded 111 textile contracts above the simplified acquisition threshold.⁴⁵ Of the 111 contracts, only 14 DHS textile contracts, excluding TSA, were valued between the simplified acquisition threshold and \$191,000, the current threshold for coverage under the WTO GPA. In part, because FPDS-NG does not designate whether or not a contract is directly related to the national security interests of the United States, we could not determine whether these contracts were subject to the provisions of the Kissell Amendment. According to DHS officials, the only current contracts considered directly related to U.S. national security and therefore subject to the Kissell Amendment are for uniforms and body armor.

The Kissell Amendment includes additional language regarding the use of any availability exception and states that any availability exception issued by DHS shall be publically posted on a government procurement internet site within 7 days of the contract.⁴⁶ However, according to agency officials, since the passage of the Kissell Amendment, DHS has not issued any waivers for availability exceptions and has therefore been limited to procuring certain textile items from the United States and designated countries identified in the FAR.

TSA Procurement Is Excluded from Coverage of Most U.S. International Trade Agreements

The Kissell Amendment restriction affects TSA textile procurements differently than other DHS components. As implemented, the Kissell Amendment restricts TSA's procurement of certain textiles above \$150,000 to the United States, Canada, Mexico, and Chile.⁴⁷ TSA's procurement of textiles is different because it is not included in the U.S. coverage schedules of the WTO GPA and all U.S. free trade agreements, with the exception of the North American Free Trade Agreement and the

⁴⁵From October 2009 to June 2017, DHS ordered textile items over the simplified acquisition threshold through an additional three contracts from the FSS program which were not included in our analysis. This analysis does not include U.S. Coast Guard contracts because we excluded the U.S. Coast Guard from our review.

⁴⁶6 U.S.C. § 453b(i).

⁴⁷48 C.F.R. § 3025.7002-3(a)(3).

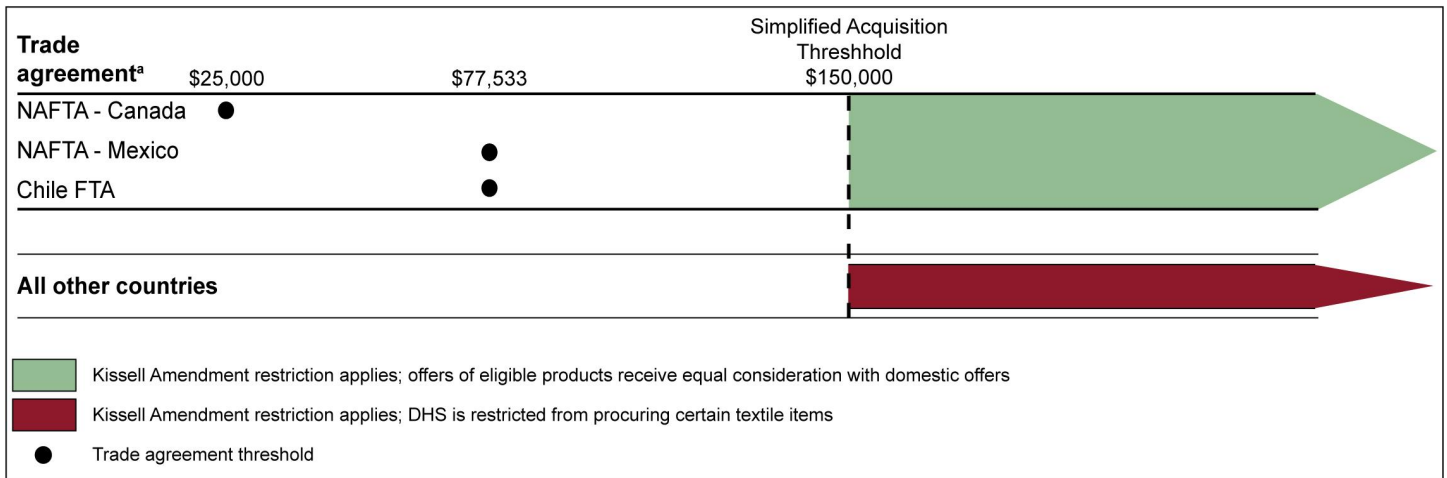
U.S.-Chile Free Trade Agreement.⁴⁸ According to USTR officials, some of TSA's security functions were originally held by the Federal Aviation Administration (FAA), which is not subject to the FAR. Furthermore, TSA was also not subject to the FAR prior to 2008, until Congress passed legislation removing the requirement that TSA procurements be subject to the acquisition management system established by the administrator of the FAA.⁴⁹ Those circumstances resulted in TSA's exclusion from the WTO GPA for textiles and most other international trade agreements, according to USTR officials. Figure 5 illustrates when the Kissell Amendment could affect TSA procurements and the applicability of international trade agreements. Based on our analysis of FPDS-NG data, from October 2009 to June 2017, TSA entered into 13 textile contracts above the simplified acquisition threshold.⁵⁰

⁴⁸Although TSA procurement is generally covered under the WTO GPA, TSA's procurement of federal supply codes 83 (textiles, leather, furs, apparel, shoes, tents, and flags) and 84 (clothing, individual equipment, and insignia) are excluded from the agreement. In FPDS-NG these codes are listed as product services codes 83 (e.g., textiles, apparel, shoes) and 84 (e.g., clothing, insignia).

⁴⁹Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. E, § 568, 121 Stat. 1844, 2092 (2007).

⁵⁰In part, because FPDS-NG does not designate whether or not a contract is directly related to the national security interests of the United States, we could not determine whether these contracts are subject to the provisions of the Kissell Amendment.

Figure 5: Key Procurement Thresholds Affect Application of the Kissell Amendment Restriction on TSA Textile Procurements



Legend: DHS=Department of Homeland Security; FTA = Free Trade Agreement; NAFTA = North American Free Trade Agreement; TSA=Transportation Security Administration.

Source: GAO analysis of section 25.4 of the Federal Acquisition Regulation (FAR) and the "Kissell Amendment," Pub. L. No. 111-5, § 604 (codified at 6 U.S.C. § 453b). | GAO-18-116

Notes: Applicability of an international trade agreement or the Kissell Amendment is subject to factors such as the procuring entity, the good being procured, and whether any exceptions apply. This figure does not address these other factors and does not illustrate coverage.

The threshold amounts presented are based on 2017 data for supply contracts. Threshold amounts for the free trade agreements in this figure are subject to revision approximately every 2 years.

^aWith respect to free trade agreements, TSA textile procurements are only covered by the Chile FTA and NAFTA.

DHS Procured Over Half of the Value of Textile Items for the Current Uniforms Contract from Foreign Sources

From October 2014 to June 2017, 58 percent of the value of uniform items ordered by DHS came from outside the United States. In September 2014, DHS entered into its current department-wide uniforms contract, the largest value textile contract since the passage of the Kissell Amendment in 2009. In the request for proposals, DHS included a clause detailing the Kissell restriction on the purchase of foreign items in the uniforms contract documentation. As implemented, when combined with the purchasing restriction in the TAA, the clause in the Kissell Amendment that states the act shall be applied consistent with U.S. obligations under international agreements allows the uniforms contract vendor to source items from up to 128 designated countries. In the request for proposal for the current uniforms contract, DHS components included a list of over 900 uniform items including shirts, pants, shoes, and insignias. The vendor that was awarded the contract then reported

the cost and expected country of origin for each item, which DHS approved. Table 1 shows the estimated cost and quantity of items estimated to be procured under the contract for components that primarily have a national security function.⁵¹

Table 1: Source of Items Estimated to Be Procured under the Current DHS Uniforms Contract

Reported Country of Origin	Estimated Cost (dollars in thousands)	Estimated Cost (percentage)	Estimated Number of Items (in hundreds)	Estimated Number of Items (percentage)
United States	195,323	50	5,095	45
Other than United States	194,736	50	6,322	55
Total	390,059		11,417	

Source: GAO analysis of the current Department of Homeland Security (DHS) uniforms contract file. | GAO-18-116

Note: This analysis includes U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), National Protection and Programs Directorate (NPPD), Transportation Security Administration (TSA), and U.S. Secret Service. We identified these five components to primarily have a national security function under the current uniforms contract, based on the contracting file provided by DHS.

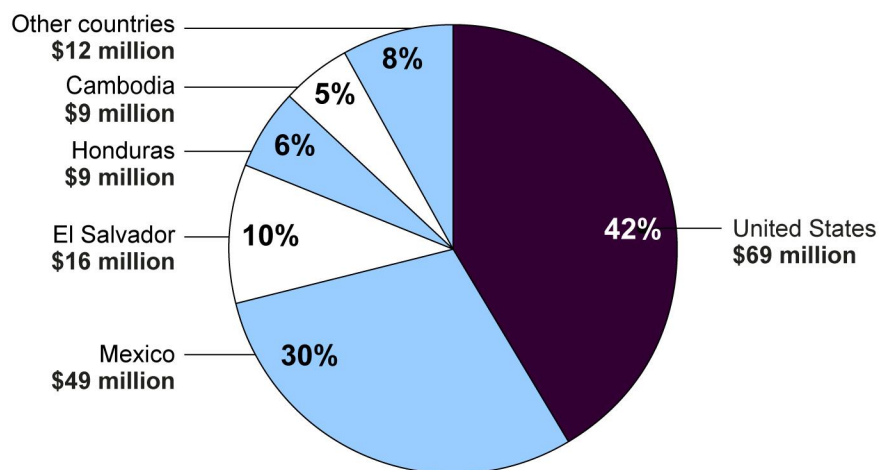
After the uniform contract was entered into by DHS in September 2014, DHS components began ordering uniform items under the contract. In addition to more than 900 types of uniform items that were agreed upon at the initiation of the contract, DHS components issued contract modifications to add or remove uniform items from the approved list. Common types of items expected to be ordered included uniform shirts, pants, socks, and shoes that met DHS component specifications.

From October 2014 to June 2017, \$164.6 million in uniform items was ordered by DHS components that primarily have a national security

⁵¹We identified CBP, ICE, NPPD, TSA, and U.S. Secret Service as primarily having a national security function under the current uniforms contract. We did not identify FEMA and FLETC as components that primarily have a national security function because, according to DHS estimates, FEMA determined that none of their estimated items was directly related to national security interests and FLETC determined that only 1 out of 88 items was directly related to national security interests. The U.S. Coast Guard is not included because they primarily order U.S.-made uniform items through the DOD, according to Coast Guard officials.

function.⁵² Of that amount, 58 percent, or \$96 million, in uniform items ordered by DHS came from a reported 12 countries outside the United States. The remaining 42 percent, or \$69 million, in uniform items was reported as originating in the United States. By value, Mexico, the largest source of uniform items from outside of the United States, accounted for 30 percent of the ordered uniform items. In addition, 8 percent of the value of uniform items was sourced from least developed countries, including Cambodia (5 percent) and Bangladesh (2 percent). Figure 6 illustrates the percentage value of DHS procurement of uniform items by reported country of origin for the current contract by components that primarily have a national security function.

Figure 6: DHS Procurement of Uniform Items by Reported Country of Origin, October 2014 to June 2017



Total value of ordered uniform items = \$164.6 million.

Source: GAO analysis of Department of Homeland Security data provided by the vendor. | GAO-18-116

Notes: Percentages may not add to 100 due to rounding.

“Other countries” in the figure include Bangladesh (2 percent); Taiwan (1 percent); South Korea (1 percent); Canada, Costa Rica, Dominican Republic, Madagascar, and Peru (all less than 1 percent); and items that were manufactured in more than one country (2 percent).

This analysis includes U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), National Protection and Programs Directorate (NPPD), Transportation Security Administration (TSA), and U.S. Secret Service. We identified these five components to primarily have

⁵²The value of uniform items ordered on the current uniforms contract for CBP, ICE, NPPD, TSA, and U.S. Secret Service is \$164.6 million. This value does not represent the obligated amount on the contract to date because the total obligated amount would include orders from additional components, such as FEMA, and administrative costs associated with the contract.

a national security function under the current uniforms contract, based on the contracting file provided by DHS.

Based on our analysis of the vendor’s ordering data, the majority of the value of uniform items ordered by all five components were sourced from outside the United States.⁵³ In addition, a larger value of the uniform items ordered by three of the five components were sourced from Mexico than from any other country, including the United States. Table 2 shows the total value of the uniform ordering data for the five DHS components that primarily have a national security function under the current uniforms contract.

Table 2: Orders under the Current Uniforms Contract by Department of Homeland Security (DHS) Component, October 2014 to June 2017

Dollars in thousands

	Reported Country of Origin, by DHS Component	Value and Percentage by Reported Country of Origin, by DHS Component	
U.S. Customs and Border Protection	United States	47,957	47%
	El Salvador	15,627	15%
	Mexico	10,569	10%
	Honduras	7,944	8%
	Cambodia	7,937	8%
	Other Countries	11,096	11%
Transportation Security Administration	Mexico	36,252	68%
	United States	17,217	32%
U.S. Immigration and Customs Enforcement	United States	2,522	48%
	Honduras	1,043	20%
	Cambodia	693	13%
	El Salvador	334	6%
	Mexico	306	6%
	Bangladesh	297	6%
	Other Countries	99	2%
National Protection and Programs Directorate	Mexico	915	35%
	United States	848	33%
	El Salvador	208	8%
	Bangladesh	193	7%

⁵³We did not include the U.S. Coast Guard in our analysis because they primarily order U.S. made uniform items through the DOD, according to Coast Guard officials.

	Reported Country of Origin, by DHS Component	Value and Percentage by Reported Country of Origin, by DHS Component	
	Cambodia	191	7%
	Honduras	119	5%
	Other Countries	130	5%
U.S. Secret Service	Mexico	948	46%
	United States	276	13%
	Bangladesh	234	11%
	Peru	167	8%
	Madagascar	150	7%
	El Salvador	125	6%
	Other Countries	169	8%
	Total Dollar Value		

DHS Component	Value and Percentage, by DHS Component	
U.S. Customs and Border Protection	101,131	61%
Transportation Security Administration	53,469	32%
U.S. Immigration and Customs Enforcement	5,294	3%
National Protection and Programs Directorate	2,605	2%
U.S. Secret Service	2,070	1%
Total Dollar Value	164,568	

Source: GAO analysis of DHS uniforms ordering data provided by the vendor. | GAO-18-116

Notes: Numbers may not add up due to rounding.

Federal Emergency Management Agency (FEMA) and Federal Law Enforcement Training Center (FLETC) are not included in this table because, according to DHS estimates, FEMA determined that none of their estimated items was directly related to national security interests and FLETC determined that only 1 out of 88 items was directly related to national security interests. The U.S. Coast Guard is not included in the table because they primarily order U.S.-made uniform items through the Department of Defense, according to Coast Guard officials.

From October 2014 through June 2017, CBP ordered approximately \$101.1 million in uniform items under the contract, and TSA ordered approximately \$53.5 million. CBP and TSA accounted for the majority of the dollar value of uniform orders from October 2014 through June 2017, representing 94 percent of the value of uniform items ordered by DHS components that primarily have a national security function under the contract. Specifically, 32 percent of the value of TSA ordered uniform items were from the United States, with the other 68 percent sourced from Mexico. As mentioned above, the Kissell Amendment, as implemented, restricts TSA's foreign procurement of certain textiles above \$150,000 to Canada, Mexico, and Chile.

Sourcing Only from the United States Could Be More Costly for DHS

According to DHS officials and representatives of the current uniforms vendor, both the price of the uniform items and the time it would take to find appropriate U.S. sources could potentially increase if current statutory and trade agreements requirements changed and DHS was required to source all of its uniform items from the United States. According to the FAR, it is the responsibility of agencies to obtain the best value for the U.S. government. According to DHS officials, the best value may be sourced from foreign countries, especially when the country is a party to an international trade agreement with the United States. DHS officials and representatives of the vendor stated that it would be possible to source most of the items in the current uniforms contract from the United States. However, representatives of the vendor speculated that sourcing only from the United States could result in a 50 to 150 percent price increase for items that are currently sourced from foreign countries. Therefore, DHS costs could increase for over half of the uniform items currently procured from foreign sources. Additionally, DHS officials stated that the domestic availability of some items, such as footwear, is limited and that it could take approximately 2 years to find U.S. suppliers for all items currently procured from foreign sources.

DHS Reported Procuring All Body Armor from U.S. Sources

The second largest current textile contract is the department-wide contract for body armor. Effective November 1, 2016, the department-wide contract for body armor is not to exceed \$93.8 million.⁵⁴ As of June 2017, DHS had obligated \$6.8 million under these body armor contracts.⁵⁵ DHS did not provide GAO documentary evidence that the body armor is produced in the United States. However, according to DHS officials, textile items under the current body armor contracts are produced in the United States. According to DHS officials, to verify that materials are produced in the United States, DHS visited the site where these materials are produced and assembled in the United States. In addition, the

⁵⁴This contract vehicle consists of indefinite-delivery indefinite-quantity contracts with three U.S. vendors.

⁵⁵DHS obligated \$42.2 million under the previous department-wide body armor contract, which was signed in November 2011.

contract contains specific language restricting the vendor from procuring items that are not in compliance with the Kissell Amendment.

Agency Comments

We provided a draft of this report for review and comment to DHS and USTR. DHS did not provide written comments on the draft report but provided a number of technical comments that we incorporated as appropriate. USTR did not provide written or technical comments to the draft report.

We are sending copies of this report to the appropriate congressional committees, to the Secretary of Homeland Security, the U.S. Trade Representative, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Kimberly M. Gianopoulos
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

A Senate Report accompanying Senate Bill 1619, a bill related to the Consolidated Appropriations Act, 2016, includes a provision for us to review the Department of Homeland Security's (DHS) implementation and compliance with the Kissell Amendment, as well as the effectiveness of the policy.¹ This report examines the extent to which (1) DHS has incorporated the Kissell Amendment into its procurement policies and procedures and (2) the Kissell Amendment affects DHS's procurement of textiles.

To address these objectives, we reviewed relevant laws and policies, such as Section 604 of the American Recovery and Reinvestment Act of 2009 (the "Kissell Amendment"), the Trade Agreements Act of 1979 (TAA) as amended, the Federal Acquisition Regulations (FAR), Homeland Security Acquisition Regulations (HSAR), and the DHS Acquisition Manual, as well as select U.S. free trade agreements. We interviewed officials from DHS and the office of the U.S. Trade Representative (USTR). We also interviewed officials from the U.S. textile and apparel industry, including the National Council of Textile Organizations and the American Apparel and Footwear Association. Finally, we spoke with officials from the vendor for DHS's current department-wide uniforms contract, VF Imagewear.

To determine the extent to which DHS incorporated the Kissell Amendment into its procurement policies and procedures, we reviewed relevant DHS documents and policies, including the HSAR, interim and final rules on the implementation of the Kissell Amendment, and component-level procurement guidance. We also interviewed officials from DHS's Office of the Chief Procurement Officer and from the components in DHS that have their own contracting authority, including U.S. Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), U.S. Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), U.S. Coast Guard, and U.S. Secret Service.

¹S. Rep. No. 114-68, at 16-17 (2015) (accompanying S. 1619, 114th Cong. (2015), which is related to Pub. L. No. 114-113, 129 Stat. 2242 (2015)).

To analyze whether or not language indicating the restriction on the procurement of foreign textiles from the Kissell Amendment was included in DHS and component level contracts, we reviewed contract files for 11 available uniforms and body armor contracts entered into since August 16, 2009, the date the Kissell Amendment became effective. We reviewed contract files from DHS uniform and body armor contracts because these are the only DHS textile contracts that are directly related to U.S. national security and therefore subject to the Kissell Amendment, according to DHS officials. We identified these uniforms and body armor contracts through reviews of Federal Procurement Data System–Next Generation (FPDS-NG) data for DHS and components contracts in groups 83 and 84² since August 16, 2009, and through discussions with CBP, DHS, and TSA officials. We were not, however, able to review every uniforms contract all DHS components have entered into since August 16, 2009, because, for example, some of the contract files were no longer available, consistent with federal document retention policies, according to DHS officials. The results of our reviews of selected contracts are not generalizable to all DHS textile contracts entered into since August 16, 2009.

To determine the extent to which the Kissell Amendment affects DHS's procurement of textiles, we reviewed relevant government regulations and laws, U.S. international agreements, DHS contract files, and ordering data for the largest textile contract since the effective date of the Kissell Amendment. We reviewed the FAR to evaluate which international agreements are applicable to DHS textile procurements, the thresholds for each international trade agreement, and the countries from which DHS may procure certain textiles. We reviewed the U.S. central government coverage schedule of the World Trade Organization (WTO) Government Procurement Agreement (GPA) to determine which procurements by DHS component are covered by the WTO GPA and therefore subject to the purchasing restriction in the TAA, as implemented in the FAR.³

To identify the dollar range for textile contracts that could be affected by the Kissell Amendment, we reviewed the Kissell Amendment and the relevant provisions of the FAR. We also interviewed USTR officials and DHS officials from the Office of the Chief Procurement Officer, CBP, and

²For the purposes of this report, textile items represent product service codes groups 83 (e.g., textiles, apparel, shoes) and 84 (e.g., clothing, insignia).

³19 U.S.C. § 2512 and FAR 25.403(c).

TSA to understand how international trade agreements affect DHS's textile procurement under the Kissell Amendment. We reviewed award and obligation data from the FPDS-NG to identify the number of textile contracts awarded by DHS components and delivery orders through the General Services Administration's Federal Supply Schedules program above the simplified acquisition threshold and those that could be affected by the Kissell Amendment. To assess the reliability of procurement data from FPDS-NG, we reviewed relevant documentation and performed verification through electronic testing. We determined the data to be sufficiently reliable for the purposes of this report.

To evaluate DHS's procurement of uniform items from the United States versus foreign sources, we reviewed the ordering estimates, which were provided as an attachment to DHS's request for proposals for the current uniforms contract, and ordering data provided by the vendor for the current uniforms contract. The current uniform and body armor contracts are the only two active contracts to which the Kissell Amendment applies, according to DHS officials. For the purposes of ordering data and estimates, we did not review previous contracts. In addition, since all body armor items are sourced from the United States, we focused our ordering analysis on the current uniforms contract. Because we did not evaluate ordering data for previous DHS uniforms contracts, these values cannot be extrapolated to all DHS uniforms contracts.

To calculate the ordering estimates for the current uniforms contract, we analyzed data created by DHS and the uniform vendor during the development phase of the contract. To focus on the DHS components that primarily have a national security function under the current uniforms contract, we analyzed ordering estimates to identify the number of uniform items that DHS components reported as being directly related to national security. Under the current uniforms contract estimates, CBP, ICE, National Protection and Programs Directorate (NPPD), TSA, and U.S. Secret Service are the five DHS components that reported the majority of uniform items as being directly related to national security. As a result, we included these five DHS components in our analysis of the ordering estimates under the current uniforms contract. We did not include FEMA or Federal Law Enforcement Training Center (FLETC) in our analysis because FEMA did not list any uniform items as related to national security and FLETC identified only one item out of 88 as related to national security. We also did not include ordering estimates from the Food and Drug Administration, which is a party to the contract but is not a DHS component. In addition, the U.S. Coast Guard did not provide

ordering estimates since it was not included in the original proposal for the current uniforms contract.

For each of the identified DHS components that reported the majority of uniform items as directly related to national security, we analyzed the estimated data based on description, the estimated quantity, the unit price, and the country of origin. While we did not analyze the value of any contract modifications that added or removed uniform items from the contract, we did review select modifications and found that contract modifications were generally consistent with the original contract estimates for that non-generalizable sample. To obtain insights into the countries of origin in the modifications, we reviewed a small, non-generalizable sample of 10 modifications. We concluded that the breakdown between domestic and foreign sourced items for the items added through the modifications was generally consistent with the breakdown between domestic and foreign sourced items in the original contracts' estimates.

To determine the reasonableness of the processes by which DHS and its vendors generated these estimates, we interviewed knowledgeable officials, reviewed documents submitted by the vendor, and performed data reliability testing. DHS officials told us that they had provided the contractor with detailed lists of the textile items it required, and the vendor reported that they determined the prices and countries of origin based on prevailing market conditions. DHS officials then reviewed the estimates provided by the vendor and approved the items, price, and country of origin under the contract. DHS officials and the vendor informed us that because these estimates reflected market conditions when the contract was signed, actual purchases of items might be from countries other than those listed in the contract, depending on changes in those conditions and availability of the items. We determined these estimates were sufficiently reliable to represent DHS's intended purchases of textile products by country of origin under this contract.

To analyze the orders of uniform items, we relied on ordering data provided by the vendor for the current uniform contract. We reviewed uniform ordering data for the five DHS components that reported the majority of uniform items as being directly related to national security: CBP, ICE, NPPD, TSA, and the U.S. Secret Service. The uniform ordering data included items ordered by individual DHS employees through an allowance system and by DHS components through bulk orders. We did not include the U.S. Coast Guard in our analysis since it primarily orders U.S.-made uniform items through the Department of

Defense's Defense Logistics Agency, according to Coast Guard officials. We analyzed the value of uniform items procured from the United States and foreign sources based on the reported country of origin and component from October 2014 to June 2017.

To assess the reliability of the ordering data provided by the vendor, we reviewed the data for inconsistencies. We clarified with the vendor the relevant data sets for our analysis and any discrepancies we identified in the data. DHS relies on the vendor to provide the countries of origin, and it was beyond the scope of this engagement for us to verify the vendor provided country of origin. We determined that the ordering data were sufficiently reliable for the purposes of comparing orders to estimates by countries of origin for uniforms under the contract, and presenting details about purchases from the United States versus other countries of origin. The result of our analysis is limited to the current department-wide uniforms contract with DHS and cannot be extrapolated to other DHS textile contracts.

For the body armor contracts, we relied on FPDS-NG data for the obligations under the current and previous contracts. We also interviewed DHS officials who identified the country of origin of the items purchased under the current body armor contracts; it was beyond the scope of this engagement to verify the agency-provided country of origin. To assess the reliability of the obligations data from FPDS-NG, we reviewed relevant documentation performed verification through electronic testing. We determined the data to be sufficiently reliable for the purposes of this report.

We conducted this performance audit from January 2017 to November 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual mentioned above, Adam Cowles (Assistant Director), Christopher J. Mulkins (Analyst-in-Charge), Martin Wilson, Lynn Cothorn, Martin de Alteriis, Neil Doherty, Grace Lui, and Julia Kennon made key contributions to this report.

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